

# Senate Daily Reader

# Thursday, February 23, 2012

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# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0356

## SENATE STATE AFFAIRS ENGROSSED NO. **HB 1046** - 2/15/2012

Introduced by: The Committee on Judiciary at the request of the Department of the Military

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding child custody during  
2 a soldier's deployment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-6-10 be amended to read as follows:

5 33-6-10. A ~~member of the armed forces of the United States, including a member of the~~  
6 ~~reserve component of the armed forces of the United States called into active service of the~~  
7 ~~armed forces, and~~ servicemember ordered to deployment, who is the physical custodian or  
8 guardian of a minor or incapacitated person, may delegate by a properly executed power of  
9 attorney to another person for a period of one year or less any of the powers regarding care and  
10 custody of the minor child or ward, except the power to consent to marriage or adoption of a  
11 minor ward. If the ~~custodian or guardian is serving on active duty with the armed forces of the~~  
12 ~~United States, and a power of attorney properly executed by such person~~ lapses prior to the  
13 servicemember's release of ~~such custodian or guardian~~ from active duty, the power of attorney  
14 shall be automatically extended for an additional year unless the ~~custodian or guardian~~  
15 servicemember is sooner released from active duty. ~~The~~ Neither the execution of such a power



1 of attorney pursuant to this section ~~or upon activation of the service member into the armed~~  
2 ~~forces of the United States does not constitute a material change in circumstances for an action~~  
3 ~~seeking to change the custody of the affected child or children by the parent without physical~~  
4 ~~custody, nor the deployment itself, may be considered a factor in considering a substantial and~~  
5 ~~material change of circumstances, nor a factor in a best interest of the child determination for~~  
6 ~~purposes of permanent child custody modification proceedings.~~ There is hereby imposed an  
7 automatic stay of all proceedings seeking a permanent change in custody of a minor child where  
8 the parent with physical custody is a ~~member of the active component or reserve component of~~  
9 ~~the armed forces of the United States called into active service during a period of national~~  
10 ~~emergency~~ servicemember called to active duty for deployment. Such stay shall continue for the  
11 period of service ~~of the national emergency due to deployment~~, unless waived in writing by the  
12 service member. Nothing in this section precludes a petition by the noncustodial parent to  
13 temporarily change physical custody, the best interests of the child remains determinative for  
14 such temporary custody determinations. ~~However, the best interests of the child shall be~~  
15 ~~determinative~~ Any temporary order modifying physical custody of the child automatically  
16 terminates upon return of the servicemember from deployment and reverts back to the custody  
17 status or order in effect prior to the deployment. However, if upon return from the deployment  
18 either the servicemember or child exhibits a substantial and material change in circumstances  
19 which adversely affects the servicemember's ability to adequately care for the child, the best  
20 interests of the child shall be determinative. The temporary custody provisions of § 25-4A-11  
21 do not apply to the temporary custody provisions of this section.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0441

## HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1051** - 2/2/2012

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Building Authority and the  
2 Board of Regents to implement the long-term capital project request of the Board of Regents  
3 providing for the demolition, construction, remodeling, or renovation of various structures  
4 on the campuses of the state's universities and to make appropriations therefor.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. It is in the public interest that the South Dakota Building Authority contract for  
7 the construction, completion, furnishing, equipping, and maintaining of, including heating, air  
8 conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping,  
9 architectural and engineering services, asbestos abatement, removal of existing roofing and  
10 structures, and such other services or actions as may be required to accomplish, the projects  
11 enumerated in sections 2 and 3 of this Act, all at the estimated cost of two hundred four million  
12 four hundred eighty-two thousand five hundred thirteen dollars. The South Dakota Building  
13 Authority may finance up to one hundred seven million dollars of the construction costs through  
14 the issuance of revenue bonds, in accordance with this Act and chapter 5-12.

15 Section 2. The campus infrastructure projects authorized in section 1 of this Act, to be



1 financed, in whole or in part, through the issuance of revenue bonds by the South Dakota  
2 Building Authority, are the following:

- 3 (1) Black Hills State University infrastructure repair and upgrade, for an estimated  
4 construction cost of four million dollars;
- 5 (2) Dakota State University energy efficiency and accessibility compliance repairs and  
6 upgrades, for an estimated construction cost of one million two hundred seventy-five  
7 thousand dollars;
- 8 (3) Northern State University street improvements, for an estimated construction cost of  
9 six hundred thousand dollars;
- 10 (4) South Dakota School of Mines and Technology utility infrastructure, for an estimated  
11 construction cost of two million seven hundred forty thousand dollars;
- 12 (5) South Dakota State University utility tunnel, steam/condensate infrastructure repair  
13 and modernization, including the construction of a supplemental plant building  
14 whose new construction is not to exceed fourteen thousand two hundred gross square  
15 feet, for an estimated construction cost of seven million dollars;
- 16 (6) South Dakota State University water, sanitary sewer, and storm sewer repairs and  
17 upgrades, for an estimated construction cost of five million dollars; and
- 18 (7) University of South Dakota mechanical overhaul and modernization, for an estimated  
19 construction cost of eight million dollars.

20 Section 3. The building construction or renovation projects authorized in section 1 of this  
21 Act, to be financed, in whole or in part, through the issuance of revenue bonds by the South  
22 Dakota Building Authority, are the following:

- 23 (1) Black Hills State University Jonas Hall Science renovation, for an estimated  
24 construction cost of two million five hundred thousand dollars, of which no more

1           than one million two hundred fifty thousand dollars may be financed through the  
2           issuance of revenue bonds, with the remaining funds being drawn from donations,  
3           federal, or other funds as provided in section 8 of this Act;

4       (2)   Black Hills State University E.Y. Berry Library renovation, for an estimated  
5           construction cost of four million five hundred thousand dollars, of which no more  
6           than three million may be financed through the issuance of revenue bonds, with the  
7           remaining funds being drawn from donations, federal, or other funds as provided in  
8           section 8 of this Act;

9       (3)   Dakota State University information system building, not to exceed forty-eight  
10          thousand gross square feet, for an estimated construction cost of ten million dollars,  
11          of which no more than six million dollars may be financed through the issuance of  
12          revenue bonds, with the remaining funds being drawn from donations, federal, or  
13          other funds as provided in section 8 of this Act;

14      (4)   Northern State University Johnson Fine Arts Center renovation and addition, not to  
15          exceed twenty-nine thousand gross square feet, for an estimated construction cost of  
16          seven million seven hundred fifty thousand dollars, of which no more than five  
17          million dollars may be financed through the issuance of revenue bonds, with the  
18          remaining funds being drawn from donations, federal, or other funds as provided in  
19          section 8 of this Act;

20      (5)   South Dakota School of Mines and Technology research center, not to exceed one  
21          hundred twenty thousand gross square feet, for an estimated construction cost of  
22          thirty-seven million forty thousand dollars, of which no more than six million forty  
23          thousand dollars may be financed through the issuance of revenue bonds, with the  
24          remaining funds being drawn from donations, federal, or other funds as provided in

1 section 8 of this Act;

2 (6) South Dakota State University new headhouse and greenhouses, not to exceed  
3 twenty-four thousand gross square feet, for an estimated construction cost of three  
4 million seven hundred eighty-five thousand dollars, of which no more than one  
5 million dollars may be financed through the issuance of revenue bonds, with the  
6 remaining funds being drawn from donations, federal, or other funds as provided in  
7 section 8 of this Act;

8 (7) South Dakota State University architecture, mathematics, and engineering facility,  
9 not to exceed seventy thousand gross square feet, for an estimated construction cost  
10 of seventeen million eighty-two thousand eight hundred dollars, of which no more  
11 than ten million dollars may be financed through the issuance of revenue bonds, with  
12 the remaining funds being drawn from donations, federal, or other funds as provided  
13 in section 8 of this Act;

14 (8) South Dakota State University visual arts facility expansion, including the complete  
15 renovation of the existing Seedhouse and West Headhouse, whose new construction  
16 is not to exceed twenty-three thousand gross square feet, for an estimated  
17 construction cost of twelve million four hundred thousand dollars, of which no more  
18 than seven million five hundred thousand dollars may be financed through the  
19 issuance of revenue bonds, with the remaining funds being drawn from donations,  
20 federal, or other funds as provided in section 8 of this Act;

21 (9) South Dakota State University Performing Arts Center expansion, not to exceed one  
22 hundred fifteen thousand gross square feet, for an estimated construction cost of  
23 thirty-three million one hundred three thousand seven hundred thirteen dollars, of  
24 which no more than thirteen million dollars may be financed through the issuance of

1 revenue bonds, with the remaining funds being drawn from donations, federal, or  
2 other funds as provided in section 8 of this Act;

3 (10) South Dakota State University new cow-calf research and education unit near Volga,  
4 South Dakota, not to exceed fifty-two thousand gross square feet, for an estimated  
5 construction cost of three million seven hundred six thousand dollars, of which no  
6 more than two million nine hundred thousand dollars may be financed through the  
7 issuance of revenue bonds, with the remaining funds being drawn from donations,  
8 federal, or other funds as provided in section 8 of this Act;

9 (11) University of South Dakota science, health and research laboratory building, not to  
10 exceed eighty thousand gross square feet, for an estimated construction cost of thirty  
11 million dollars, of which no more than eight million six hundred ninety-five dollars  
12 may be financed through the issuance of revenue bonds, with the remaining funds  
13 being drawn from donations, federal, or other funds as provided in section 8 of this  
14 Act;

15 (12) University of South Dakota Patterson Hall renovation, for an estimated construction  
16 cost of six million five hundred thousand dollars to be financed through the issuance  
17 of revenue bonds; and

18 (13) University of South Dakota Dakota Hall renovation, for an estimated construction  
19 cost of seven million five hundred thousand dollars to be financed through the  
20 issuance of revenue bonds.

21 Section 4. There is hereby appropriated from other fund expenditure authority the sum of  
22 one hundred thirty-three thousand dollars (\$133,000), or so much thereof as may be necessary,  
23 to the Board of Regents, payable from patent royalty income accruing to South Dakota State  
24 University, for the purchase of a tract of land and buildings to form part of the new cow-calf



1 research and education unit near Volga, South Dakota, and described as the Southeast Quarter  
2 of the Southwest Quarter of the Southeast Quarter (SE1/4 SW1/4 SE 1/4), EXCEPT the West  
3 One Hundred Sixty-Five Feet (W 165') thereof, of Section Thirty-three (33), Township One  
4 Hundred Eleven (111) North, Range Fifty-one (51) West of the 5th P.M., Brookings County,  
5 South Dakota, for the use by the South Dakota State University cow-calf research and education  
6 unit.

7 Section 5. The authorizations granted under sections 1 and 12 of this Act, and all necessary  
8 appropriations required to finance and to complete such projects, remain effective until July 1,  
9 2026. However, no bonds may be issued under the authority of this Act if such issuance would  
10 violate the restriction established in § 13-51-2.

11 Section 6. All cost estimates contained in this Act have been stated in terms of 2011 values.  
12 The Building Authority, at the request of the Board of Regents, may adjust such cost estimates  
13 to reflect inflation as measured by the Building Cost Index reported by the Engineering News  
14 Record, additional expenditures required to comply with regulations adopted after the effective  
15 date of this Act, or donations, federal, or other funds received pursuant to section 8 of this Act,  
16 provided that such adjustments to project cost estimates for any given project may not exceed  
17 one hundred twenty-five percent of the estimated project cost stated in sections 2, 3, or 12 of  
18 this Act. Additionally, notwithstanding any adjustment in cost estimates permitted under this  
19 section, no increase in gross square footage authorized by subdivisions (3) to (11) inclusive, of  
20 section 3 of this Act, or subdivision (5) of section 2 of this Act may exceed ten percent.

21 Section 7. No indebtedness, bond, or obligation incurred or created under the authority of  
22 this Act may be or may become a lien, charge, or liability against the state of South Dakota, nor  
23 against the property or funds of the state of South Dakota within the meaning of the Constitution  
24 or statutes of the state.

1       Section 8. The Building Authority and the Board of Regents may accept, transfer, and  
2       expend any funds obtained for the projects authorized in this Act from federal sources,  
3       donations, unrestricted other fund transfers, or any other source, all of which comprise a special  
4       fund for the benefitted project, and all monies deposited into that fund are hereby appropriated  
5       to the projects authorized by this Act in addition to the amounts otherwise authorized by this  
6       Act, provided that the aggregate increases to the estimated project funds from such sources may  
7       not exceed one hundred twenty-five percent of the estimated project construction cost stated in  
8       sections 2 or 3 of this Act.

9       Section 9. The administration of the design and construction of the projects authorized in  
10      this Act shall be under the general charge and supervision of the Bureau of Administration as  
11      provided in chapter 5-14. The executive director of the Board of Regents and the executive  
12      secretary of the Building Authority, or their designees, shall approve vouchers and the state  
13      auditor shall draw warrants to pay expenditures authorized by this Act.

14      Section 10. The Board of Regents may make and enter into a lease agreement with the  
15      Building Authority and make rental payments under the terms thereof, for the purposes of this  
16      Act, pursuant to chapter 5-12, from the higher education facilities fund and, for two million  
17      dollars of the bonds issued to finance the project authorized in subdivision (10) of section 3 of  
18      this Act, from other fund appropriations.

19      Section 11. For the purposes of this Act, the term, gross square footage, means the sum of  
20      all areas on all floors of a building included within the outside faces of the building's exterior  
21      walls, including floor penetration areas, however insignificant, for circulation and shaft areas  
22      that connect one floor to another as computed by physically measuring or scaling measurements  
23      from the outside faces of exterior walls, disregarding cornices, pilaster, and buttresses that  
24      extend beyond the wall faces. The term includes excavated basement area; mezzanines and

1 attics; garages; multiple floor parking structures; enclosed porches, inner, or outer balconies  
2 whether walled or not, if the balconies are utilized for operational functions; and corridors  
3 whether walled or not, if the corridors are within the outside face lines of the building, to the  
4 extent of the roof drip line and the footprints of stairways, elevator shafts, and ducts on each  
5 floor through which the corridors pass. The term does not include open areas such as unenclosed  
6 parking lots, playing fields, courts, and light wells, clear span areas not exceeding three feet in  
7 height, or portions of upper floors eliminated by rooms or lobbies that rise above single-floor  
8 height.

9 Section 12. The Board of Regents may demolish certain buildings that will be replaced by,  
10 or whose use will be rendered unnecessary as a result of, construction authorized by this Act.  
11 There is hereby appropriated from other fund expenditure authority the sum of one million nine  
12 hundred fifty thousand dollars (\$1,950,000), or so much thereof as may be necessary, to the  
13 Board of Regents for the purposes of demolition, abatement of asbestos or other such hazardous  
14 materials, lawful disposal of the fixtures or rubble, and any other action reasonably necessary  
15 to render usable the sites occupied by the following facilities:

- 16 (1) Dakota State University Lowry Hall, comprising eleven thousand seven hundred  
17 twenty-three gross square feet, for an estimated cost of seventy thousand dollars;
- 18 (2) South Dakota State University West Greenhouses, comprising eight thousand nine  
19 hundred thirty-seven gross square feet, for an estimated cost of thirty thousand  
20 dollars;
- 21 (3) South Dakota State University, the Industrial Arts building, comprising four thousand  
22 eight hundred forty gross square feet; the Solberg Annex, comprising thirty-two  
23 thousand one hundred seventy-eight gross square feet; and the Communications  
24 Building, comprising four thousand one hundred eighty-three gross square feet; all

1           for an estimated cost of three hundred fifty thousand dollars;

2       (4)   South Dakota State University Grove Hall, comprising eighteen thousand six  
3           hundred thirteen gross square feet, for an estimated cost of two hundred seventy-five  
4           thousand dollars;

5       (5)   South Dakota State University Physiology Building, comprising five thousand two  
6           hundred forty-eight gross square feet, for an estimated cost of twenty-five thousand  
7           dollars; and

8       (6)   University of South Dakota Julian Hall, comprising fifty thousand one hundred  
9           seventy-three gross square feet, and Noteboom Hall, comprising twenty-one thousand  
10          six hundred sixty-four gross square feet, for an estimated cost of one million two  
11          hundred thousand dollars.

12       Section 13. On or before January 1, 2013, and each January first thereafter, until such time  
13       as the authorization granted herein expires or the authorized projects are completed, the Board  
14       of Regents shall provide a report to the Joint Committee on Appropriations regarding the status  
15       of the projects authorized in sections 2, 3, and 12 of this Act.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

625T0096

## HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1059** - 1/30/2012

Introduced by: Representatives Lust, Feinstein, and Gosch and Senators Nygaard and Cutler

1 FOR AN ACT ENTITLED, An Act to revise Article 9 of the Uniform Commercial Code.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 57A-9-102 be amended to read as follows:

4 57A-9-102. (a) In this chapter:

5 (1) "Accession" means goods that are physically united with other goods in such a  
6 manner that the identity of the original goods is not lost.

7 (2) "Account," except as used in "account for," means a right to payment of a monetary  
8 obligation, whether or not earned by performance, (i) for property that has been or  
9 is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services  
10 rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv)  
11 for a secondary obligation incurred or to be incurred, (v) for energy provided or to be  
12 provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii)  
13 arising out of the use of a credit or charge card or information contained on or for use  
14 with the card, or (viii) as winnings in a lottery or other game of chance operated or  
15 sponsored by a state, governmental unit of a state, or person licensed or authorized



1 to operate the game by a state or governmental unit of a state. The term includes  
2 health-care-insurance receivables. The term does not include (i) rights to payment  
3 evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit  
4 accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or  
5 (vi) rights to payment for money or funds advanced or sold, other than rights arising  
6 out of the use of a credit or charge card or information contained on or for use with  
7 the card.

8 (3) "Account debtor" means a person obligated on an account, chattel paper, or general  
9 intangible. The term does not include persons obligated to pay a negotiable  
10 instrument, even if the instrument constitutes part of chattel paper.

11 (4) "Accounting," except as used in "accounting for," means a record:

12 (A) Authenticated by a secured party;

13 (B) Indicating the aggregate unpaid secured obligations as of a date not more than  
14 35 days earlier or 35 days later than the date of the record; and

15 (C) Identifying the components of the obligations in reasonable detail.

16 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

17 (A) Which secures payment or performance of an obligation for:

18 (i) Goods or services furnished in connection with a debtor's farming  
19 operation; or

20 (ii) Rent on real property leased by a debtor in connection with its farming  
21 operation;

22 (B) Which is created by statute in favor of a person that:

23 (i) In the ordinary course of its business furnished goods or services to a  
24 debtor in connection with a debtor's farming operation; or

1                   (ii)    Leased real property to a debtor in connection with the debtor's farming  
2   operation; and

3                   (C)    Whose effectiveness does not depend on the person's possession of the  
4   personal property.

5       (6)    "As-extracted collateral" means:

6                   (A)    Oil, gas, or other minerals that are subject to a security interest that:

7                                   (i)    Is created by a debtor having an interest in the minerals before  
8   extraction; and

9                                   (ii)   Attaches to the minerals as extracted; or

10                  (B)    Accounts arising out of the sale at the wellhead or minehead of oil, gas, or  
11   other minerals in which the debtor had an interest before extraction.

12       (7)    "Authenticate" means:

13                   (A)    To sign; or

14                   (B)    ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a~~  
15                                   ~~record in whole or in part, with the present intent of the authenticating person~~  
16                                   ~~to identify the person and adopt or accept a record~~ With present intent to adopt  
17                                   or accept a record, to attach to or logically associate with the record an  
18                                   electronic sound, symbol, or process.

19       (8)    "Bank" means an organization that is engaged in the business of banking. The term  
20   includes savings banks, savings and loan associations, credit unions, and trust  
21   companies.

22       (9)    "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the  
23   like.

24       (10)   "Certificate of title" means a certificate of title with respect to which a statute

provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and



1 (C) Goods that are the subject of a consignment.

2 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

3 (A) The claimant is an organization; or

4 (B) The claimant is an individual and the claim:

5 (i) Arose in the course of the claimant's business or profession; and

6 (ii) Does not include damages arising out of personal injury to or the death  
7 of an individual.

8 (14) "Commodity account" means an account maintained by a commodity intermediary  
9 in which a commodity contract is carried for a commodity customer.

10 (15) "Commodity contract" means a commodity futures contract, an option on a  
11 commodity futures contract, a commodity option, or another contract if the contract  
12 or option is:

13 (A) Traded on or subject to the rules of a board of trade that has been designated  
14 as a contract market for such a contract pursuant to federal commodities laws;  
15 or

16 (B) Traded on a foreign commodity board of trade, exchange, or market, and is  
17 carried on the books of a commodity intermediary for a commodity customer.

18 (16) "Commodity customer" means a person for which a commodity intermediary carries  
19 a commodity contract on its books.

20 (17) "Commodity intermediary" means a person that:

21 (A) Is registered as a futures commission merchant under federal commodities  
22 law; or

23 (B) In the ordinary course of its business provides clearance or settlement services  
24 for a board of trade that has been designated as a contract market pursuant to

1 federal commodities law.

2 (18) "Communicate" means:

3 (A) To send a written or other tangible record;

4 (B) To transmit a record by any means agreed upon by the persons sending and  
5 receiving the record; or

6 (C) In the case of transmission of a record to or by a filing office, to transmit a  
7 record by any means prescribed by filing-office rule.

8 (19) "Consignee" means a merchant to which goods are delivered in a consignment.

9 (20) "Consignment" means a transaction, regardless of its form, in which a person delivers  
10 goods to a merchant for the purpose of sale and:

11 (A) The merchant:

12 (i) Deals in goods of that kind under a name other than the name of the  
13 person making delivery;

14 (ii) Is not an auctioneer; and

15 (iii) Is not generally known by its creditors to be substantially engaged in  
16 selling the goods of others;

17 (B) With respect to each delivery, the aggregate value of the goods is \$1,000 or  
18 more at the time of delivery;

19 (C) The goods are not consumer goods immediately before delivery; and

20 (D) The transaction does not create a security interest that secures an obligation.

21 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.

22 (22) "Consumer debtor" means a debtor in a consumer transaction.

23 (23) "Consumer goods" means goods that are used or bought for use primarily for  
24 personal, family, or household purposes.

- 1       (24) "Consumer-goods transaction" means a consumer transaction in which:
- 2           (A) An individual incurs an obligation primarily for personal, family, or household
- 3               purposes; and
- 4           (B) A security interest in consumer goods secures the obligation.
- 5       (25) "Consumer obligor" means an obligor who is an individual and who incurred the
- 6           obligation as part of a transaction entered into primarily for personal, family, or
- 7           household purposes.
- 8       (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
- 9           obligation primarily for personal, family, or household purposes, (ii) a security
- 10          interest secures the obligation, and (iii) the collateral is held or acquired primarily for
- 11          personal, family, or household purposes. The term includes consumer-goods
- 12          transactions.
- 13       (27) "Continuation statement" means an amendment of a financing statement which:
- 14           (A) Identifies, by its file number, the initial financing statement to which it relates;
- 15               and
- 16           (B) Indicates that it is a continuation statement for, or that it is filed to continue
- 17               the effectiveness of, the identified financing statement.
- 18       (28) "Debtor" means:
- 19           (A) A person having an interest, other than a security interest or other lien, in the
- 20               collateral, whether or not the person is an obligor;
- 21           (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes;
- 22               or
- 23           (C) A consignee.
- 24       (29) "Deposit account" means a demand, time, savings, passbook, or similar account

maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 57A-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to § 57A-9-519(a).

(37) "Filing office" means an office designated in § 57A-9-501 as the place to file a financing statement.

1 (38) "Filing-office rule" means a rule adopted pursuant to § 57A-9-526.

2 (39) "Financing statement" means a record or records composed of an initial financing  
3 statement and any filed record relating to the initial financing statement.

4 (40) "Fixture filing" means the filing of a financing statement covering goods that are or  
5 are to become fixtures and satisfying § 57A-9-502(a) and (b). The term includes the  
6 filing of a financing statement covering goods of a transmitting utility which are or  
7 are to become fixtures.

8 (41) "Fixtures" means goods that have become so related to particular real property that  
9 an interest in them arises under real property law.

10 (42) "General intangible" means any personal property, including things in action, other  
11 than accounts, chattel paper, commercial tort claims, deposit accounts, documents,  
12 goods, instruments, investment property, letter-of-credit rights, letters of credit,  
13 money, and oil, gas, or other minerals before extraction. The term includes payment  
14 intangibles and software.

15 (43) ~~(Reserved.)~~ "Good faith" means honesty in fact and the observance of reasonable  
16 commercial standards of fair dealing.

17 (44) "Goods" means all things that are movable when a security interest attaches. The  
18 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a  
19 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown,  
20 growing, or to be grown, even if the crops are produced on trees, vines, or bushes,  
21 and (v) manufactured homes. The term also includes a computer program embedded  
22 in goods and any supporting information provided in connection with a transaction  
23 relating to the program if (i) the program is associated with the goods in such a  
24 manner that it customarily is considered part of the goods, or (ii) by becoming the

owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of

1 service;

2 (C) Are furnished by a person under a contract of service; or

3 (D) Consist of raw materials, work in process, or materials used or consumed in  
4 a business.

5 (49) "Investment property" means a security, whether certificated or uncertificated,  
6 security entitlement, securities account, commodity contract, or commodity account.

7 (50) "Jurisdiction of organization" with respect to a registered organization, means the  
8 jurisdiction under whose law the organization is formed or organized.

9 (51) "Letter-of-credit right" means a right to payment or performance under a letter of  
10 credit, whether or not the beneficiary has demanded or is at the time entitled to  
11 demand payment or performance. The term does not include the right of a beneficiary  
12 to demand payment or performance under a letter of credit.

13 (52) "Lien creditor" means:

14 (A) A creditor that has acquired a lien on the property involved by attachment,  
15 levy, or the like;

16 (B) An assignee for benefit of creditors from the time of assignment;

17 (C) A trustee in bankruptcy from the date of the filing of the petition; or

18 (D) A receiver in equity from the time of appointment.

19 (53) "Manufactured home" means a structure, transportable in one or more sections,  
20 which, in the traveling mode, is eight body feet or more in width or 40 body feet or  
21 more in length, or, when erected on site, is 320 or more square feet, and which is  
22 built on a permanent chassis and designed to be used as a dwelling with or without  
23 a permanent foundation when connected to the required utilities, and includes the  
24 plumbing, heating, air-conditioning, and electrical systems contained therein. The

term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 57A-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.



1 (60) "Original debtor," except as used in § 57A-9-310(c), means a person that, as debtor,  
2 entered into a security agreement to which a new debtor has become bound under  
3 § 57A-9-203(d).

4 (61) "Payment intangible" means a general intangible under which the account debtor's  
5 principal obligation is a monetary obligation.

6 (62) "Person related to," with respect to an individual, means:

7 (A) The spouse of the individual;

8 (B) A brother, brother-in-law, sister, or sister-in-law of the individual;

9 (C) An ancestor or lineal descendant of the individual or the individual's spouse;  
10 or

11 (D) Any other relative, by blood or marriage, of the individual or the individual's  
12 spouse who shares the same home with the individual.

13 (63) "Person related to," with respect to an organization, means:

14 (A) A person directly or indirectly controlling, controlled by, or under common  
15 control with the organization;

16 (B) An officer or director of, or a person performing similar functions with respect  
17 to, the organization;

18 (C) An officer or director of, or a person performing similar functions with respect  
19 to, a person described in subparagraph (A);

20 (D) The spouse of an individual described in subparagraph (A), (B), or (C); or

21 (E) An individual who is related by blood or marriage to an individual described  
22 in subparagraph (A), (B), (C), or (D) and shares the same home with the  
23 individual.

24 (64) "Proceeds," except as used in § 57A-9-609(b), means the following property:

- 1 (A) Whatever is acquired upon the sale, lease, license, exchange, or other  
2 disposition of collateral;
- 3 (B) Whatever is collected on, or distributed on account of, collateral;
- 4 (C) Rights arising out of collateral;
- 5 (D) To the extent of the value of collateral, claims arising out of the loss,  
6 nonconformity, or interference with the use of, defects or infringement of  
7 rights in, or damage to, the collateral; or
- 8 (E) To the extent of the value of collateral and to the extent payable to the debtor  
9 or the secured party, insurance payable by reason of the loss or nonconformity  
10 of, defects or infringement of rights in, or damage to, the collateral.
- 11 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary  
12 obligation, does not evidence an order to pay, and does not contain an  
13 acknowledgment by a bank that the bank has received for deposit a sum of money or  
14 funds.
- 15 (66) "Proposal" means a record authenticated by a secured party which includes the terms  
16 on which the secured party is willing to accept collateral in full or partial satisfaction  
17 of the obligation it secures pursuant to §§ 57A-9-620, 57A-9-621, and 57A-9-622.
- 18 (67) "Public-finance transaction" means a secured transaction in connection with which:  
19 (A) Debt or other securities are issued; and  
20 (B) The debtor, obligor, secured party, account debtor or other person obligated  
21 on collateral, assignor or assignee of a secured obligation, or assignor or  
22 assignee of a security interest is a state or a governmental unit of a state.
- 23 (68) "Public organic record" means a record that is available to the public for inspection  
24 and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the original record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~(69)~~(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

~~(70)~~(71) "Registered organization" means an organization organized solely under the law of a single state or the United States ~~and as to which the state or the United States must maintain a public record showing the organization to have~~

1 ~~been organized by the filing of a public organic record with, the issuance of~~  
2 ~~a public organic record by, or the enactment of legislation by the state or the~~  
3 ~~United States. The term includes a business trust that is formed or organized~~  
4 ~~under the law of a single state if a statute of the state governing business trusts~~  
5 ~~requires that the business trust's organic record be filed with the state.~~

6 ~~(71)~~(72) "Secondary obligor" means an obligor to the extent that:

7 (A) The obligor's obligation is secondary; or

8 (B) The obligor has a right of recourse with respect to an obligation secured by  
9 collateral against the debtor, another obligor, or property of either.

10 ~~(72)~~(73) "Secured party" means:

11 (A) A person in whose favor a security interest is created or provided for under a  
12 security agreement, whether or not any obligation to be secured is outstanding;

13 (B) A person that holds an agricultural lien;

14 (C) A consignor;

15 (D) A person to which accounts, chattel paper, payment intangibles, or promissory  
16 notes have been sold;

17 (E) A trustee, indenture trustee, agent, collateral agent, or other representative in  
18 whose favor a security interest or agricultural lien is created or provided for;  
19 or

20 (F) A person that holds a security interest arising under §§ 57A-2-401, 57A-2-505,  
21 57A-2-711(3), 57A-2A-508(5), 57A-4-210, or 57A-5-118.

22 ~~(73)~~(74) "Security agreement" means an agreement that creates or provides for a  
23 security interest.

24 ~~(74)~~(75) "Send," in connection with a record or notification, means:

1           (A) To deposit in the mail, deliver for transmission, or transmit by any other usual  
2                       means of communication, with postage or cost of transmission provided for,  
3                       addressed to any address reasonable under the circumstances; or

4           (B) To cause the record or notification to be received within the time that it would  
5                       have been received if properly sent under subparagraph (A).

6    ~~(75)~~(76) "Software" means a computer program and any supporting information  
7                       provided in connection with a transaction relating to the program. The term  
8                       does not include a computer program that is included in the definition of  
9                       goods.

10   ~~(76)~~(77) "State" means a state of the United States, the District of Columbia, Puerto  
11                       Rico, the United States Virgin Islands, or any territory or insular possession  
12                       subject to the jurisdiction of the United States.

13   ~~(77)~~(78) "Supporting obligation" means a letter-of-credit right or secondary obligation  
14                       that supports the payment or performance of an account, chattel paper, a  
15                       document, a general intangible, an instrument, or investment property.

16   ~~(78)~~(79) "Tangible chattel paper" means chattel paper evidenced by a record or records  
17                       consisting of information that is inscribed on a tangible medium.

18   ~~(79)~~(80) "Termination statement" means an amendment of a financing statement which:

19           (A) Identifies, by its file number, the initial financing statement to which it relates;  
20                       and

21           (B) Indicates either that it is a termination statement or that the identified  
22                       financing statement is no longer effective.

23   ~~(80)~~(81) "Transmitting utility" means a person primarily engaged in the business of:

24           (A) Operating a railroad, subway, street railway, or trolley bus;

- 1 (B) Transmitting communications electrically, electromagnetically, or by light;
- 2 (C) Transmitting goods by pipeline or sewer; or
- 3 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

4 (b) The following definitions in other sections apply to this chapter:

5 "Applicant." § 57A-5-102.

6 "Broker." § 57A-8-102.

7 "Certificated security." § 57A-8-102.

8 "Check." § 57A-3-104.

9 "Clearing corporation." § 57A-8-102.

10 "Contract for sale." § 57A-2-106.

11 "Control" (with respect to a document of title) § 57A-7-106.

12 "Customer." § 57A-4-104.

13 "Entitlement holder." § 57A-8-102.

14 "Financial asset." § 57A-8-102.

15 "Holder in due course." § 57A-3-302.

16 "Issuer" (with respect to a letter of credit or letter-of-credit right). § 57A-5-102.

17 "Issuer" (with respect to a security). § 57A-8-201.

18 "Lease." § 57A-2A-103.

19 "Lease agreement." § 57A-2A-103.

20 "Lease contract." § 57A-2A-103.

21 "Leasehold interest." § 57A-2A-103.

22 "Lessee." § 57A-2A-103.

23 "Lessee in ordinary course of business." § 57A-2A-103.

24 "Lessor." § 57A-2A-103.

1 "Lessor's residual interest." § 57A-2A-103.

2 "Letter of credit." § 57A-5-102.

3 "Merchant." § 57A-2-104.

4 "Negotiable instrument." § 57A-3-104.

5 "Nominated person." § 57A-5-102.

6 "Note." § 57A-3-104.

7 "Proceeds of a letter of credit." § 57A-5-114.

8 "Prove." § 57A-3-103.

9 "Sale." § 57A-2-106.

10 "Securities account." § 57A-8-501.

11 "Securities intermediary." § 57A-8-102.

12 "Security." § 57A-8-102.

13 "Security certificate." § 57A-8-102.

14 "Security entitlement." § 57A-8-102.

15 "Uncertificated security." § 57A-8-102.

16 (c) SDCL chapter 57A-1 contains general definitions and principles of construction and  
17 interpretation applicable throughout this chapter.

18 Section 2. That § 57A-9-105 be amended to read as follows:

19 57A-9-105. (a) A secured party has control of electronic chattel paper if a system employed  
20 for evidencing the transfer of interests in the chattel paper reliably establishes the secured party  
21 as the person to which the chattel paper was assigned.

22 (b) A system satisfies subsection (a) and a secured party has control of electronic chattel  
23 paper, if the record or records comprising the chattel paper are created, stored, and assigned in  
24 such a manner that:

- 1       (1)   A single authoritative copy of the record or records exists which is unique,  
2           identifiable and, except as otherwise provided in paragraphs (4), (5), and (6),  
3           unalterable;
- 4       (2)   The authoritative copy identifies the secured party as the assignee of the record or  
5           records;
- 6       (3)   The authoritative copy is communicated to and maintained by the secured party or  
7           its designated custodian;
- 8       (4)   Copies or ~~revisions~~ amendments that add or change an identified assignee of the  
9           authoritative copy can be made only with the ~~participation~~ consent of the secured  
10          party;
- 11      (5)   Each copy of the authoritative copy and any copy of a copy is readily identifiable as  
12          a copy that is not the authoritative copy; and
- 13      (6)   Any ~~revision~~ amendment of the authoritative copy is readily identifiable as ~~an~~  
14          authorized or unauthorized ~~revision~~.

15       Section 3. That § 57A-9-307 be amended to read as follows:

16       57A-9-307. (a) In this section, "place of business" means a place where a debtor conducts  
17       its affairs.

18       (b) Except as otherwise provided in this section, the following rules determine a debtor's  
19       location:

- 20      (1)   A debtor who is an individual is located at the individual's principal residence.
- 21      (2)   A debtor that is an organization and has only one place of business is located at its  
22          place of business.
- 23      (3)   A debtor that is an organization and has more than one place of business is located  
24          at its chief executive office.



(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered

1 organization.

2 (h) The United States is located in the District of Columbia.

3 (i) A branch or agency of a bank that is not organized under the law of the United States or  
4 a state is located in the state in which the branch or agency is licensed, if all branches and  
5 agencies of the bank are licensed in only one state.

6 (j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at  
7 the designated office of the agent upon which service of process may be made on behalf of the  
8 carrier.

9 (k) This section applies only for purposes of this part.

10 Section 4. That § 57A-9-311 be amended to read as follows:

11 57A-9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing  
12 statement is not necessary or effective to perfect a security interest in property subject to:

13 (1) A statute, regulation, or treaty of the United States whose requirements for a security  
14 interest's obtaining priority over the rights of a lien creditor with respect to the  
15 property preempt § 57A-9-310(a);

16 (2) A certificate-of-title statute of this state under the law of which indication of a  
17 security interest on the certificate of title is required as a condition of perfection; or

18 (3) A ~~certificate-of-title~~ statute of another jurisdiction which provides for a security  
19 interest to be indicated on ~~the~~ a certificate of title as a condition or result of the  
20 security interest's obtaining priority over the rights of a lien creditor with respect to  
21 the property.

22 (b) Compliance with the requirements of a statute, regulation, or treaty described in  
23 subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing  
24 of a financing statement under this article. Except as otherwise provided in subsection (d) and

1 §§ 57A-9-313 and 57A-9-316(d) and (e) for goods covered by a certificate of title, a security  
2 interest in property subject to a statute, regulation, or treaty described in subsection (a) may be  
3 perfected only by compliance with those requirements, and a security interest so perfected  
4 remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

5 (c) Except as otherwise provided in subsection (d) and § 57A-9-316(d) and (e), duration and  
6 renewal of perfection of a security interest perfected by compliance with the requirements  
7 prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the  
8 statute, regulation, or treaty. In other respects, the security interest is subject to this article.

9 (d) During any period in which collateral subject to a statute specified in subsection (a)(2)  
10 is inventory held for sale or lease by a person or leased by that person as lessor and that person  
11 is in the business of selling goods of that kind, this section does not apply to a security interest  
12 in that collateral created by that person.

13 Section 5. That § 57A-9-316 be amended to read as follows:

14 57A-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction  
15 designated in § 57A-9-301(1) or 57A-9-305(c) remains perfected until the earliest of:

16 (1) The time perfection would have ceased under the law of that jurisdiction;

17 (2) The expiration of four months after a change of the debtor's location to another  
18 jurisdiction; or

19 (3) The expiration of one year after a transfer of collateral to a person that thereby  
20 becomes a debtor and is located in another jurisdiction.

21 (b) If a security interest described in subsection (a) becomes perfected under the law of the  
22 other jurisdiction before the earliest time or event described in that subsection, it remains  
23 perfected thereafter. If the security interest does not become perfected under the law of the other  
24 jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to

1 have been perfected as against a purchaser of the collateral for value.

2 (c) A possessory security interest in collateral, other than goods covered by a certificate of  
3 title and as-extracted collateral consisting of goods, remains continuously perfected if:

4 (1) The collateral is located in one jurisdiction and subject to a security interest perfected  
5 under the law of that jurisdiction;

6 (2) Thereafter the collateral is brought into another jurisdiction; and

7 (3) Upon entry into the other jurisdiction, the security interest is perfected under the law  
8 of the other jurisdiction.

9 (d) Except as otherwise provided in subsection (e), a security interest in goods covered by  
10 a certificate of title which is perfected by any method under the law of another jurisdiction when  
11 the goods become covered by a certificate of title from this State remains perfected until the  
12 security interest would have become unperfected under the law of the other jurisdiction had the  
13 goods not become so covered.

14 (e) A security interest described in subsection (d) becomes unperfected as against a  
15 purchaser of the goods for value and is deemed never to have been perfected as against a  
16 purchaser of the goods for value if the applicable requirements for perfection under § 57A-9-  
17 311(b) or 57A-9-313 are not satisfied before the earlier of:

18 (1) The time the security interest would have become unperfected under the law of the  
19 other jurisdiction had the goods not become covered by a certificate of title from this  
20 state; or

21 (2) The expiration of four months after the goods had become so covered.

22 (f) A security interest in deposit accounts, letter-of-credit rights, or investment property  
23 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated  
24 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's

jurisdiction, as applicable, remains perfected until the earlier of:

- (1) The time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

- (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location;
- (2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been

1           perfected as against a purchaser of the collateral for value.

2           (i) If a financing statement naming an original debtor is filed pursuant to the law of the  
3           jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) and the new debtor is located in  
4           another jurisdiction, the following rules apply:

5           (1)   The financing statement is effective to perfect a security interest in collateral in  
6               which the new debtor has or acquires rights before or within four months after the  
7               new debtor becomes bound under § 57A-9-203(d), if the financing statement would  
8               have been effective to perfect a security interest in the collateral if the collateral been  
9               acquired by the original debtor.

10          (2)   A security interest perfected by the financing statement and which becomes perfected  
11               under the law of the other jurisdiction before the earlier of the expiration of the four-  
12               month period or the time the financing statement would have become ineffective  
13               under the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c)  
14               remains perfected thereafter. A security interest that is perfected by the financing  
15               statement but which does not become perfected under the law of the other  
16               jurisdiction before the earlier time or event becomes unperfected and is deemed never  
17               to have been perfected as against a purchaser of the collateral for value.

18          Section 6. That § 57A-9-317 be amended to read as follows:

19          57A-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

20          (1)   A person entitled to priority under § 57A-9-322; and

21          (2)   Except as otherwise provided in subsection (e), a person that becomes a lien creditor  
22               before the earlier of the time:

23               (A)   The security interest or agricultural lien is perfected; or

24               (B)   One of the conditions specified in § 57A-9-203(b)(3) is met and a financing

1 statement covering the collateral is filed.

2 (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of  
3 tangible chattel paper, tangible documents, goods, instruments, or a certified security ~~certificate~~  
4 takes free of a security interest or agricultural lien if the buyer gives value and receives delivery  
5 of the collateral without knowledge of the security interest or agricultural lien and before it is  
6 perfected.

7 (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security  
8 interest or agricultural lien if the lessee gives value and receives delivery of the collateral  
9 without knowledge of the security interest or agricultural lien and before it is perfected.

10 (d) A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts,~~  
11 ~~electronic chattel paper, electronic documents, general intangibles, or investment property~~  
12 collateral other than tangible chattel paper, tangible documents, goods, instruments, or a  
13 certificated security takes free of a security interest if the licensee or buyer gives value without  
14 knowledge of the security interest and before it is perfected.

15 (e) Except as otherwise provided in § 57A-9-320 and 57A-9-321, if a person files a  
16 financing statement with respect to a purchase-money security interest before or within 20 days  
17 after the debtor receives delivery of the collateral, the security interest takes priority over the  
18 rights of a buyer, lessee, or lien creditor which arise between the time the security interest  
19 attaches and the time of filing.

20 Section 7. That § 57A-9-326 be amended to read as follows:

21 57A-9-326. (a) Subject to subsection (b), a security interest that is created by a new debtor  
22 ~~which is~~ in collateral in which the new debtor has or acquires rights and is perfected by a filed  
23 financing statement that ~~is effective solely under § 57A-9-508 in collateral in which a new~~  
24 ~~debtor has or acquires rights~~ would be ineffective to perfect the security interest but for the

1 application of § 57A-9-508 or §§ 57A-9-508 and 57A-9-316(i)(1) is subordinate to a security  
2 interest in the same collateral which is perfected other than by a filed financing statement that  
3 is effective solely under § 57A-9-508.

4 (b) The other provisions of this part determine the priority among conflicting security  
5 interests in the same collateral perfected by filed financing statements ~~that are effective solely~~  
6 ~~under § 57A-9-508~~ described in subsection (a). However, if the security agreements to which  
7 a new debtor became bound as debtor were not entered into by the same original debtor, the  
8 conflicting security interests rank according to priority in time of the new debtor's having  
9 become bound.

10 Section 8. That § 57A-9-406 be amended to read as follows:

11 57A-9-406. (a) Subject to subsections (b) through (i), an account debtor on an account,  
12 chattel paper, or a payment intangible may discharge its obligation by paying the assignor until,  
13 but not after, the account debtor receives a notification, authenticated by the assignor or the  
14 assignee, that the amount due or to become due has been assigned and that payment is to be  
15 made to the assignee. After receipt of the notification, the account debtor may discharge its  
16 obligation by paying the assignee and may not discharge the obligation by paying the assignor.

17 (b) Subject to subsection (h), notification is ineffective under subsection (a):

18 (1) If it does not reasonably identify the rights assigned;

19 (2) To the extent that an agreement between an account debtor and a seller of a payment  
20 intangible limits the account debtor's duty to pay a person other than the seller and  
21 the limitation is effective under law other than this article; or

22 (3) At the option of an account debtor, if the notification notifies the account debtor to  
23 make less than the full amount of any installment or other periodic payment to the  
24 assignee, even if:



1 (A) Only a portion of the account, chattel paper, or payment intangible has been  
2 assigned to that assignee;

3 (B) A portion has been assigned to another assignee; or

4 (C) The account debtor knows that the assignment to that assignee is limited.

5 (c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably  
6 furnish reasonable proof that the assignment has been made. Unless the assignee complies, the  
7 account debtor may discharge its obligation by paying the assignor, even if the account debtor  
8 has received a notification under subsection (a).

9 (d) Except as otherwise provided in subsection (e) and §§ 57A-2A-303 and 57A-9-407, and  
10 subject to subsection (h), a term in an agreement between an account debtor and an assignor or  
11 in a promissory note is ineffective to the extent that it:

12 (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated  
13 on the promissory note to the assignment or transfer of, or the creation, attachment,  
14 perfection, or enforcement of a security interest in, the account, chattel paper,  
15 payment intangible, or promissory note; or

16 (2) Provides that the assignment or transfer or the creation, attachment, perfection, or  
17 enforcement of the security interest may give rise to a default, breach, right of  
18 recoupment, claim, defense, termination, right of termination, or remedy under the  
19 account, chattel paper, payment intangible, or promissory note.

20 (e) Subsection (d) does not apply to the sale of a payment intangible or promissory note  
21 other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral  
22 under § 57A-9-620.

23 (f) Except as otherwise provided in §§ 57A-2A-303 and 57A-9-407 and subject to  
24 subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires

1 the consent of a government, governmental body or official, or account debtor to the assignment  
2 or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to  
3 the extent that the rule of law, statute, or regulation:

4 (1) Prohibits, restricts, or requires the consent of the government, governmental body or  
5 official, or account debtor to the assignment or transfer of, or the creation,  
6 attachment, perfection, or enforcement of a security interest in the account or chattel  
7 paper; or

8 (2) Provides that the assignment or transfer or the creation, attachment, perfection, or  
9 enforcement of the security interest may give rise to a default, breach, right of  
10 recoupment, claim, defense, termination, right of termination, or remedy under the  
11 account or chattel paper.

12 (g) Subject to subsection (h), an account debtor may not waive or vary its option under  
13 subsection (b)(3).

14 (h) This section is subject to law other than this article which establishes a different rule for  
15 an account debtor who is an individual and who incurred the obligation primarily for personal,  
16 family, or household purposes.

17 (i) This section does not apply to an assignment of a health-care-insurance receivable.

18 (j) This section prevails over any inconsistent statute.

19 Section 9. That § 57A-9-408 be amended to read as follows:

20 57A-9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note  
21 or in an agreement between an account debtor and a debtor which relates to a  
22 health-care-insurance receivable or a general intangible, including a contract, permit, license,  
23 or franchise, and which term prohibits, restricts, or requires the consent of the person obligated  
24 on the promissory note or the account debtor to, the assignment or transfer of, or creation,

1 attachment, or perfection of a security interest in, the promissory note, health-care-insurance  
2 receivable, or general intangible, is ineffective to the extent that the term:

3 (1) Would impair the creation, attachment, or perfection of a security interest; or

4 (2) Provides that the assignment or transfer or the creation, attachment, or perfection of  
5 the security interest may give rise to a default, breach, right of recoupment, claim,  
6 defense, termination, right of termination, or remedy under the promissory note,  
7 health-care-insurance receivable, or general intangible.

8 (b) Subsection (a) applies to a security interest in a payment intangible or promissory note  
9 only if the security interest arises out of a sale of the payment intangible or promissory note,  
10 other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral  
11 under § 57A-9-620.

12 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a  
13 government, governmental body or official, person obligated on a promissory note, or account  
14 debtor to the assignment or transfer of, or creation of a security interest in, a promissory note,  
15 health-care-insurance receivable, or general intangible, including a contract, permit, license, or  
16 franchise between an account debtor and a debtor, is ineffective to the extent that the rule of  
17 law, statute, or regulation:

18 (1) Would impair the creation, attachment, or perfection of a security interest; or

19 (2) Provides that the assignment or transfer or the creation, attachment, or perfection of  
20 the security interest may give rise to a default, breach, right of recoupment, claim,  
21 defense, termination, right of termination, or remedy under the promissory note,  
22 health-care-insurance receivable, or general intangible.

23 (d) To the extent that a term in a promissory note or in an agreement between an account  
24 debtor and a debtor which relates to a health-care-insurance receivable or general intangible or

1 a rule of law, statute, or regulation described in subsection (c) would be effective under law  
2 other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or  
3 perfection of a security interest in the promissory note, health-care-insurance receivable, or  
4 general intangible:

5 (1) Is not enforceable against the person obligated on the promissory note or the account  
6 debtor;

7 (2) Does not impose a duty or obligation on the person obligated on the promissory note  
8 or the account debtor;

9 (3) Does not require the person obligated on the promissory note or the account debtor  
10 to recognize the security interest, pay or render performance to the secured party, or  
11 accept payment or performance from the secured party;

12 (4) Does not entitle the secured party to use or assign the debtor's rights under the  
13 promissory note, health-care-insurance receivable, or general intangible, including  
14 any related information or materials furnished to the debtor in the transaction giving  
15 rise to the promissory note, health-care-insurance receivable, or general intangible;

16 (5) Does not entitle the secured party to use, assign, possess, or have access to any trade  
17 secrets or confidential information of the person obligated on the promissory note or  
18 the account debtor; and

19 (6) Does not entitle the secured party to enforce the security interest in the promissory  
20 note, health-care-insurance receivable, or general intangible.

21 (e) This section prevails over any inconsistent statute.

22 Section 10. That § 57A-9-502 be amended to read as follows:

23 57A-9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

24 (1) Provides the name of the debtor and either the social security number or the internal

1 revenue service taxpayer identification number of the debtor;

2 (2) Provides the name of the secured party or a representative of the secured party; and

3 (3) Indicates the collateral covered by the financing statement.

4 (b) Except as otherwise provided in § 57A-9-501(b), to be sufficient, a financing statement  
5 that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and  
6 covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

7 (1) Indicate that it covers this type of collateral;

8 (2) Indicate that it is to be filed for record in the real property records;

9 (3) Provide a description of the real property to which the collateral is related sufficient  
10 to give constructive notice of a mortgage under the law of this State if the description  
11 were contained in a record of the mortgage of the real property. A financing  
12 statement covering timber to be cut or covering minerals or the like (including oil and  
13 gas) or accounts subject to § 57A-9-301, or a financing statement filed as a fixture  
14 filing where the debtor is not a transmitting utility, must show that it covers this type  
15 of collateral, must recite that it is to be filed for record in the real estate records, and  
16 the financing statement must contain a description of the real estate sufficient if it  
17 were contained in a mortgage of the real estate to give constructive notice of the  
18 mortgage under the law of this state. If the debtor does not have an interest of record  
19 in the real estate, the financing statement must show the name of a record owner. No  
20 description of the real estate or the name of the record owner thereof is required for  
21 a fixture filing where the debtor is a transmitting utility; and

22 (4) If the debtor does not have an interest of record in the real property, provide the name  
23 of a record owner.

24 (c) A record of a mortgage is effective, from the date of recording, as a financing statement

1 filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to  
2 be cut only if:

3 (1) The record indicates the goods or accounts that it covers;

4 (2) The goods are or are to become fixtures related to the real property described in the  
5 record or the collateral is related to the real property described in the record and is  
6 as-extracted collateral or timber to be cut;

7 (3) The record satisfies the requirements for a financing statement in this section ~~other~~  
8 ~~than an indication, but:~~

9 (A) The record need not indicate that it is to be filed in the real property records;  
10 and

11 (B) The record sufficiently provides the name of a debtor who is an individual if  
12 it provides the individual name of the debtor or the surname and first personal  
13 name of the debtor, even if the debtor is an individual to whom § 57A-9-  
14 503(a)(4) applies; and

15 (4) The record is recorded.

16 (d) A financing statement may be filed before a security agreement is made or a security  
17 interest otherwise attaches.

18 Section 11. That § 57A-9-503 be amended to read as follows:

19 57A-9-503. (a) A financing statement sufficiently provides the name of the debtor:

20 (1) ~~If~~ Except as otherwise provided in paragraph (3), if the debtor is a registered  
21 organization or the collateral is held in a trust that is a registered organization, only  
22 if the financing statement provides the name of the debtor indicated that is stated to  
23 be the registered organization's name on the public organic record of most recently  
24 filed with or issued or enacted by the debtor's registered organization's jurisdiction

of organization which ~~shows the debtor to have been organized~~ purports to state,  
amend, or restate the registered organization's name;

(2) ~~If Subject to subsection (f), if the debtor is a decedent's estate collateral is being~~  
~~administered by the personal representative of a decedent,~~ only if the financing  
statement provides, as the name of the debtor, the name of the decedent and, in a  
separate part of the financing statement, indicates that the debtor is an estate  
collateral is being administered by a personal representative;

(3) ~~If the debtor is a trust or a trustee acting with respect to property held in trust, only~~  
~~if the financing statement:~~

~~(A) Provides the name specified for the trust in its organic documents or, if no~~  
~~name is specified, provides the name of the settlor and additional information~~  
~~sufficient to distinguish the debtor from other trusts having one or more of the~~  
~~same settlors; and~~

~~(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a~~  
~~trustee acting with respect to property held in trust~~ collateral is held in a trust  
that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name  
so specified; or

(ii) If the organic record of the trust does not specify a name for the trust,  
the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i),  
indicates that the collateral is held in a trust; or

1                   (ii) If the name is provided in accordance with subparagraph (A)(ii),  
2                   provides additional information sufficient to distinguish the trust from  
3                   other trusts having one or more of the same settlors or the same testator  
4                   and indicates that the collateral is held in a trust, unless the additional  
5                   information so indicates;

6       (4) Subject to subsection (g), if the debtor is an individual to whom this state has issued  
7       a driver license that has not expired, only if it provides the name of the individual  
8       which is indicated on the driver license;

9       (5) If the debtor is an individual to whom paragraph (4) does not apply, only if it  
10       provides the individual name of the debtor or the surname and first personal name of  
11       the debtor; and

12       ~~(4)~~ (6)       In other cases:

13               (A) If the debtor has a name, only if provides the ~~individual or~~ organizational  
14               name of the debtor; and

15               (B) If the debtor does not have a name, only if it provides the names of the  
16               partners, members, associates, or other persons comprising the debtor in a  
17               manner that each name provided would be sufficient if the person named were  
18               the debtor.

19       (b) A financing statement that provides the name of the debtor in accordance with subsection  
20       (a) is not rendered ineffective by the absence of:

21               (1) A trade name or other name of the debtor; or

22               (2) Unless required under subsection ~~(a)(4)(B)~~ (a)(6)(B), names of partners, members,  
23               associates, or other persons comprising the debtor.

24       (c) A financing statement that provides only the debtor's trade name does not sufficiently



1 provide the name of the debtor.

2 (d) Failure to indicate the representative capacity of a secured party or representative of a  
3 secured party does not affect the sufficiency of a financing statement.

4 (e) A financing statement may provide the name of more than one debtor and the name of  
5 more than one secured party.

6 (f) The name of the decedent indicated on the order appointing the personal representative  
7 of the decedent issued by the court having jurisdiction over the collateral is sufficient as the  
8 "name of the decedent" under subsection (a)(2).

9 (g) If this state has issued to an individual more than one driver license of a kind described  
10 in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4)  
11 refers.

12 (h) In this section, the "name of the settlor or testator" means:

13 (1) If the settlor is a registered organization, the name of the registered organization  
14 indicated on the public organic record filed with or enacted by the registered  
15 organization; or

16 (2) In other cases, the name of the settlor or testator indicated in the trust's organic  
17 record.

18 Section 12. That § 57A-9-507 be amended to read as follows:

19 57A-9-507. (a) A filed financing statement remains effective with respect to collateral that  
20 is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest  
21 or agricultural lien continues, even if the secured party knows of or consents to the disposition.

22 (b) Except as otherwise provided in subsection (c) and § 57A-9-508, a financing statement  
23 is not rendered ineffective if, after the financing statement is filed, the information provided in  
24 the financing statement becomes seriously misleading under § 57A-9-506.

(c) If a debtor so changes its the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under § 57A-9-503(a) so that the financing statement becomes seriously misleading under § 57A-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the ~~change~~ filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~change~~ filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~the change~~ that event.

Section 13. That § 57A-9-515 be amended to read as follows:

57A-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing. Financing statements filed before July 1, 1997, are effective for a period of five years from the date of filing and thereafter for a period of sixty days.

The expiration date established by a financing statement filed prior to July 1, 1997, whether or not continued by a continuation statement shall remain in full force and effect and is not diminished by any subsequent amendments to this chapter.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of

1 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection  
2 (d). Upon lapse, a financing statement ceases to be effective and any security interest or  
3 agricultural lien that was perfected by the financing statement becomes unperfected, unless the  
4 security interest is perfected otherwise. If the security interest or agricultural lien becomes  
5 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the  
6 collateral for value.

7 (d) A continuation statement may be filed only within six months before the expiration of  
8 the five-year period specified in subsection (a) or the thirty-year period specified in subsection  
9 (b), whichever is applicable.

10 However, for financing statements filed before July 1, 1997, a continuation statement may  
11 be filed within six months before and sixty days after the expiration of the five-year period.

12 (e) Except as otherwise provided in § 57A-9-510, upon timely filing of a continuation  
13 statement, the effectiveness of the initial financing statement continues for a period of five years  
14 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial  
15 financing statement continues for a period of five years and sixty days, commencing on the day  
16 on which the financing statement would have become ineffective in the absence of the filing.  
17 Upon the expiration of the five-year period, the financing statement lapses in the same manner  
18 as provided in subsection (c), unless, before the lapse, another continuation statement is filed  
19 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner  
20 to continue the effectiveness of the initial financing statement.

21 (f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the  
22 financing statement is effective until a termination statement is filed.

23 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing  
24 under § 57A-9-502(c) remains effective as a financing statement filed as a fixture filing until

the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 14. That § 57A-9-516 be amended to read as follows:

57A-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or ~~correction~~ information statement, the record:

(i) Does not identify the initial financing statement as required by § 57A-9-512 or 57A-9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under § 57A-9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~ surname; or

1 (D) In the case of a record filed or recorded in the filing office described in § 57A-  
2 9-501(a)(1), the record does not provide a sufficient description of the real  
3 property to which it relates;

4 (4) In the case of an initial financing statement or an amendment that adds a secured  
5 party of record, the record does not provide a name and mailing address for the  
6 secured party of record;

7 (5) In the case of an initial financing statement or an amendment that provides a name  
8 of a debtor which was not previously provided in the financing statement to which  
9 the amendment relates, the record does not:

10 (A) Provide a mailing address for the debtor; or

11 (B) Indicate whether the name provided as the name of the debtor is the name of  
12 an individual or an organization; ~~or~~

13 ~~———— (C) If the financing statement indicates that the debtor is an organization, provide:~~

14 ~~———— (i) A type of organization for the debtor;~~

15 ~~———— (ii) A jurisdiction of organization for the debtor; or~~

16 ~~———— (iii) An organizational identification number for the debtor or indicate that~~  
17 ~~the debtor has none;~~

18 (6) In the case of an assignment reflected in an initial financing statement under § 57A-9-  
19 514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a  
20 name and mailing address for the assignee; or

21 (7) In the case of a continuation statement, the record is not filed within the six-month  
22 period prescribed by § 57A-9-515(d).

23 (c) For purposes of subsection (b):

24 (1) A record does not provide information if the filing office is unable to read or decipher

1 the information; and

2 (2) A record that does not indicate that it is an amendment or identify an initial financing  
3 statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518,  
4 is an initial financing statement.

5 (d) A record that is communicated to the filing office with tender of the filing fee, but which  
6 the filing office refuses to accept for a reason other than one set forth in subsection (b), is  
7 effective as a filed record except as against a purchaser of the collateral which gives value in  
8 reasonable reliance upon the absence of the record from the files.

9 Section 15. That § 57A-9-518 be amended to read as follows:

10 57A-9-518. (a) A person may file in the filing office ~~a correction~~ an information statement  
11 with respect to a record indexed there under the person's name if the person believes that the  
12 record is inaccurate or was wrongfully filed.

13 (b) ~~A correction~~ An information statement under subsection (a) must:

14 (1) Identify the record to which it relates by:

15 (A) The file number assigned to the initial financing statement to which the record  
16 relates; and

17 (B) If the ~~correction~~ information statement relates to a record filed or recorded in  
18 a filing office described in § 57A-9-501(a)(1), the date and time that the initial  
19 financing statement was filed or recorded and the information specified in  
20 § 57A-9-502(b);

21 (2) Indicate that it is ~~a correction~~ an information statement; and

22 (3) Provide the basis for the person's belief that the record is inaccurate and indicate the  
23 manner in which the person believes the record should be amended to cure any  
24 inaccuracy or provide the basis for the person's belief that the record was wrongfully

1 filed.

2 (c) A person may file in the filing office an information statement with respect to a record  
3 filed there if the person is a secured party of record with respect to the financing statement to  
4 which the record relates and believes that the person that filed the record was not entitled to do  
5 so under § 57A-9-509(d).

6 (d) An information statement under subsection (c) must:

7 (1) Identify the record to which it relates by:

8 (a) The file number assigned to the initial financing statement to which the record  
9 relates; and

10 (b) If the statement relates to a record filed or recorded in a filing office described  
11 in § 57A-9-501(a)(1), the date and time that the initial financing statement was  
12 filed or recorded and the information specified in § 57A-9-502(b);

13 (2) Indicate that it is an information statement; and

14 (3) Provide the basis for the person's belief that the person that filed the record was not  
15 entitled to do so under § 57A-9-509(d).

16 (e) The filing of a ~~correction~~ an information statement does not affect the effectiveness of  
17 an initial financing statement or other filed record.

18 Section 16. That § 57A-9-521 be amended to read as follows:

19 57A-9-521. (a) A filing office that accepts written records may not refuse to accept a written  
20 initial financing statement in the following form and format except for a reason set forth in  
21 § 57A-9-516(b).

1



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>
<b>B. E-MAIL CONTACT AT FILER (optional)</b>
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only deb Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME			
OR 1b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

2. **DEBTOR'S NAME:** Provide only deb Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME			
OR 2b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

3. **SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY):** Provide only pos Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME			
OR 3b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

4. **COLLATERAL:** This financing statement covers the following collateral

5. Check <u>only</u> if applicable and check <u>only</u> one box. Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions); <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public Finance Transaction <input type="checkbox"/> Manufactured Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessor/Lessor <input type="checkbox"/> Consignor/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailee <input type="checkbox"/> Licensee/Licensee	
8. OPTIONAL FILER REFERENCE DATA:	

UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)



1

**UCC FINANCING STATEMENT ADDENDUM**

**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

OR	9a. ORGANIZATION'S NAME	
	9b. INDIVIDUAL'S SURNAME	
	FIRST PERSONAL NAME	
	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c.

OR	10a. ORGANIZATION'S NAME			
	10b. INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

OR	11a. ORGANIZATION'S NAME				
	11b. INDIVIDUAL'S SURNAME				
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)			
	11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable).	14. This FINANCING STATEMENT: <input type="checkbox"/> covers timber to be cut <input type="checkbox"/> covers as-extracted collateral <input type="checkbox"/> is filed as a fixture filing
15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):	16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)

2

- 1 (b) A filing office that accepts written records may not refuse to accept a written record in
- 2 the following form and format except for a reason set forth in § 57A-9-516(b).

<b>UCC FINANCING STATEMENT AMENDMENT</b>															
<b>FOLLOW INSTRUCTIONS</b>															
<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>															
<b>B. E-MAIL CONTACT AT FILER (optional)</b>															
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>															
<b>THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY</b>															
<b>1a. INITIAL FINANCING STATEMENT FILE NUMBER</b>								<b>1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed (for record) for recorded in the REAL ESTATE RECORDS. Filer: <u>          </u> Amendement A-Extend on Form UCC3A-2) and provide Debtor's name in item 1a.</b>							
<b>2. <input type="checkbox"/> TERMINATION:</b> Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.															
<b>3. <input type="checkbox"/> ASSIGNMENT</b> (full or partial). Provide name of Assignee in item 7a or 7b, <u>and</u> address of Assignee in item 7c <u>and</u> name of Assignor in item 9. For partial assignment, complete items 7 and 9 <u>and</u> also indicate affected collateral in item 8.															
<b>4. <input type="checkbox"/> CONTINUATION:</b> Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.															
<b>5. <input type="checkbox"/> PARTY INFORMATION CHANGE:</b> Check <u>one</u> of these two boxes: <input type="checkbox"/> Debtor <u>or</u> <input type="checkbox"/> Secured Party of record. <b>AND</b> Check <u>one</u> of these three boxes to: <input type="checkbox"/> CHANGE name and/or address. Complete item 6a or 6b, <u>and</u> item 7a or 7b, <u>and</u> item 7c. <input type="checkbox"/> ADD name. Complete item 7a or 7b, <u>and</u> item 7c. <input type="checkbox"/> DELETE name. Give record name to be deleted in item 6a or 6b.															
<b>6. CURRENT RECORD INFORMATION:</b> Complete for Party Information Change - provide only <u>one</u> name (6a or 6b).															
6a ORGANIZATION'S NAME															
OR 6b INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S) INITIAL(S) SUFFIX															
<b>7. CHANGED OR ADDED INFORMATION:</b> Complete for Assignment or Party Information Change - provide only <u>one</u> name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name).															
7a ORGANIZATION'S NAME															
OR 7b INDIVIDUAL'S SURNAME															
INDIVIDUAL'S FIRST PERSONAL NAME															
INDIVIDUAL'S ADDITIONAL NAME(S) INITIAL(S) SUFFIX															
7c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY															
<b>8. <input type="checkbox"/> COLLATERAL CHANGE:</b> <u>Also</u> check <u>one</u> of these four boxes: <input type="checkbox"/> ADD collateral <input type="checkbox"/> DELETE collateral <input type="checkbox"/> RESTATE covered collateral <input type="checkbox"/> ASSIGN collateral. Indicate collateral:															
<b>9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:</b> Provide only <u>one</u> name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here <input type="checkbox"/> and provide name of authorizing Debtor.															
9a ORGANIZATION'S NAME															
OR 9b INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S) INITIAL(S) SUFFIX															
<b>10. OPTIONAL FILER REFERENCE DATA:</b>															

UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11)

1

UCC FINANCING STATEMENT AMENDMENT ADDENDUM			
FOLLOW INSTRUCTIONS			
<b>11. INITIAL FINANCING STATEMENT FILE NUMBER:</b> Same as item 1a on Amendment form			
<b>12. NAME OF PARTY AUTHORIZING THIS AMENDMENT:</b> Same as item 3 on Amendment form			
12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S SURNAME			
FIRST PERSONAL NAME			
ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX			
<b>THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY</b>			
<b>13. Name of DEBTOR on related financing statement</b> (Name of a current Debtor of record required for indexing purposes only in some filing offices - see instruction item 13). Provide only Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit			
13a. ORGANIZATION'S NAME			
OR			
13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S) (INITIAL(S)) SUFFIX			
<b>14. ADDITIONAL SPACE FOR ITEM 9 (Collateral):</b>			
<b>16. This FINANCING STATEMENT AMENDMENT</b>		<b>17. Description of real estate:</b>	
<input type="checkbox"/> covers timber to be cut <input type="checkbox"/> covers as-extracted collateral <input type="checkbox"/> is filed as a future filing <b>16.</b> Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest)			
<b>18. MISCELLANEOUS:</b>			

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad) (Rev. 04/20/11)

- 2        Section 17. That § 57A-9-607 be amended to read as follows:
- 3        57A-9-607. (a) If so agreed, and in any event after default, a secured party:
- 4        (1)    May notify an account debtor or other person obligated on collateral to make
- 5                payment or otherwise render performance to or for the benefit of the secured party;
- 6        (2)    May take any proceeds to which the secured party is entitled under § 57A-9-315;
- 7        (3)    May enforce the obligations of an account debtor or other person obligated on

collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under § 57A-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under § 57A-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

1 (d) A secured party may deduct from the collections made pursuant to subsection (c)  
2 reasonable expenses of collection and enforcement, including reasonable attorney's fees and  
3 legal expenses incurred by the secured party.

4 (e) This section does not determine whether an account debtor, bank, or other person  
5 obligated on collateral owes a duty to a secured party.

6 Section 9-801. This Act takes effect on July 1, 2013.

7 Section 9-802. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 (a) Except as otherwise provided in this part, this Act applies to a transaction or lien within  
10 its scope, even if the transaction or lien was entered into or created before July 1, 2013.

11 (b) This Act does not affect an action, case, or proceeding commenced before July 1, 2013.

12 Section 9-803. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 (a) A security interest that is a perfected security interest immediately before this Act takes  
15 effect is a perfected security interest under chapter 57A-9 as amended by this Act if, when this  
16 Act takes effect, the applicable requirements for attachment and perfection under chapter 57A-9  
17 as amended by this Act are satisfied without further action.

18 (b) Except as otherwise provided in section 9-805 of this Act, if, immediately before this Act  
19 takes effect, a security interest is a perfected security interest, but the applicable requirements  
20 for perfection under chapter 57A-9 as amended by this Act are not satisfied when this Act takes  
21 effect, the security interest remains perfected thereafter only if the applicable requirements for  
22 perfection under chapter 57A-9 as amended by this Act are satisfied within one year after this  
23 Act takes effect.

24 Section 9-804. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read

as follows:

A security interest that is an unperfected security interest immediately before this Act takes effect becomes a perfected security interest:

(1) Without further action, when this Act takes effect if the applicable requirements for perfection under chapter-57A-9 as amended by this Act are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 9-805. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as follows:

(a) The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under chapter 57A-9 as amended by this Act.

(b) This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in chapter 57A-9 as it existed before the effective date of this Act. However, except as otherwise provided in subsections (c) and (d) and section 9-806 of this Act, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this Act not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

1 (c) The filing of a continuation statement after this Act takes effect does not continue the  
2 effectiveness of a financing statement filed before this Act takes effect. However, upon the  
3 timely filing of a continuation statement after this Act takes effect and in accordance with the  
4 law of the jurisdiction governing perfection as provided in chapter 57A-9 as amended by this  
5 Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before  
6 this Act takes effect continues for the period provided by the law of that jurisdiction.

7 (d) Subsection (b)(2)(B) applies to a financing statement that, before this Act takes effect,  
8 is filed against a transmitting utility and satisfies the applicable requirements for perfection  
9 under the law of the jurisdiction governing perfection as provided in chapter 57A-9 as it existed  
10 prior to this Act, only to the extent that chapter 57A-9 as amended by this Act provides that the  
11 law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs  
12 perfection of a security interest in collateral covered by the financing statement.

13 (e) A financing statement that includes a financing statement filed before this Act takes  
14 effect and a continuation statement filed after this Act takes effect is effective only to the extent  
15 that it satisfies the requirements of §§ 57A-9-501 to 57A-9-530, inclusive, as amended by this  
16 Act for an initial financing statement. A financing statement that indicates that the debtor is a  
17 decedent's estate indicates that the collateral is being administered by a personal representative  
18 within the meaning of § 57A-9-503(a)(2) as amended by this Act. A financing statement that  
19 indicates that the debtor is a trust or is a trustee acting with respect to property held in trust  
20 indicates that the collateral is held in a trust within the meaning of § 57A-9-503(a)(3) as  
21 amended by this Act.

22 Section 9-806. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
23 as follows:

24 (a) The filing of an initial financing statement in the office specified in § 57A-9-501

continues the effectiveness of a financing statement filed before this Act takes effect if:

- (1) The filing of an initial financing statement in that office would be effective to perfect a security interest under chapter 57A-9 as amended by this Act;
- (2) The pre-effective-date financing statement was filed in an office in another state; and
- (3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

- (1) If the initial financing statement is filed before this Act takes effect, for the period provided in unamended § 57A-9-515 as found prior to July 1, 2015, with respect to an initial financing statement; and
- (2) If the initial financing statement is filed after this Act takes effect, for the period provided in § 57A-9-515 as amended by this Act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

- (1) Satisfy the requirements of §§ 57A-9-501 to 57A-9-530, inclusive, as amended by this Act for an initial financing statement;
- (2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
- (3) Indicate that the pre-effective-date financing statement remains effective.

Section 9-807. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read as follows:

- (a) In this section, "pre-effective-date financing statement" means a financing statement filed



1 before this Act takes effect.

2 (b) After this Act takes effect, a person may add or delete collateral covered by, continue or  
3 terminate the effectiveness of, or otherwise amend the information provided in, a  
4 pre-effective-date financing statement only in accordance with the law of the jurisdiction  
5 governing perfection as provided in chapter 57A-9 as amended by this Act. However, the  
6 effectiveness of a pre-effective-date financing statement also may be terminated in accordance  
7 with the law of the jurisdiction in which the financing statement is filed.

8 (c) Except as otherwise provided in subsection (d), if the law of this state governs perfection  
9 of a security interest, the information in a pre-effective-date financing statement may be  
10 amended after this Act takes effect only if:

11 (1) The pre-effective-date financing statement and an amendment are filed in the office  
12 specified in § 57A-9-501;

13 (2) An amendment is filed in the office specified in § 57A-9-501 concurrently with, or  
14 after the filing in that office of, an initial financing statement that satisfies section 9-  
15 806(c) of this Act; or

16 (3) An initial financing statement that provides the information as amended and satisfies  
17 section 9-806(c) of this Act is filed in the office specified in § 57A-9-501.

18 (d) If the law of this state governs perfection of a security interest, the effectiveness of a  
19 pre-effective-date financing statement may be continued only under section 9-805(c) and ( e)  
20 of this Act or section 9-806 of this Act.

21 (e) Whether or not the law of this state governs perfection of a security interest, the  
22 effectiveness of a pre-effective-date financing statement filed in this state may be terminated  
23 after this Act takes effect by filing a termination statement in the office in which the  
24 pre-effective-date financing statement is filed, unless an initial financing statement that satisfies

1 section 9-806(c) of this Act has been filed in the office specified by the law of the jurisdiction  
2 governing perfection as provided in chapter 57A-9 as amended by this Act as the office in which  
3 to file a financing statement.

4 Section 9-808. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 A person may file an initial financing statement or a continuation statement under this part  
7 if:

8 (1) The secured party of record authorizes the filing; and

9 (2) The filing is necessary under this part:

10 (A) To continue the effectiveness of a financing statement filed before this Act  
11 takes effect; or

12 (B) To perfect or continue the perfection of a security interest.

13 Section 9-809. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 This Act determines the priority of conflicting claims to collateral. However, if the relative  
16 priorities of the claims were established before this Act takes effect, chapter 57A-9-as it existed  
17 before July 1, 2013 determines priority.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

843T0108

## HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1130** - 2/7/2012

Introduced by: Representatives Turbiville, Abdallah, Blake, Hickey, Hunt, Kirkeby, Lust, Novstrup (David), Olson (Betty), Rausch, Romkema, Sly, Tornow, Verchio, Wick, and Willadsen and Senators Schlekeway, Cutler, Gray, Haverly, Krebs, Maher, Nelson (Tom), Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise the fee schedule for certain documents filed with  
2 the county register of deeds, to create a county and statewide fund for the purpose of  
3 modernizing and preserving records, and to distribute certain revenue.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 7-9-15 be amended to read as follows:

6 7-9-15. The register of deeds shall charge and receive the following fees:

7 (1) For recording deeds, mortgages, and all other instruments not specifically provided  
8 for in this section or this code, the sum of ~~ten~~ thirty dollars for the first ~~page and fifty~~  
9 pages plus two dollars for each additional page or fraction thereof. ~~Each rider or~~  
10 ~~addendum shall be considered as an additional page. If a~~ exceeding fifty pages. A real  
11 estate document recorded with the register of deeds ~~does not~~ shall conform to § 43-  
12 28-23, ~~the sum of ten dollars shall be charged in addition to the fees specified in this~~  
13 ~~subdivision~~ but may not be rejected for recording if the document does not comply



1 with § 43-28-23 unless it is not sufficiently legible or cannot be reproduced as a  
2 readable copy using the register of deeds' current method of reproduction;

3 (2) For a certified copy of any instrument of record, including certificate and official  
4 seal, ~~two~~ the sum of five dollars for the first page plus twenty cents one dollar for  
5 each additional page after five pages or fraction thereof, and for an uncertified copy;  
6 one dollar, ~~plus twenty cents for each page after five pages. The board of county~~  
7 ~~commissioners by resolution shall establish the fees charged for duplicate microfilm.~~  
8 The fee applies to each copy whether it is a hard copy, microfilm, electronic copy, or  
9 facsimile transmission. In addition to the fee for a certified copy of the record of any  
10 birth, there is an additional charge of two dollars for each copy requested, which shall  
11 be submitted on a monthly basis to the state treasurer to be deposited in the children's  
12 trust fund;

13 (3) For filing and indexing a bill of sale, seed grain lien, or thresher's lien, the sum of ~~ten~~  
14 thirty dollars for the first fifty pages plus two dollars for each page or fraction thereof  
15 exceeding fifty pages. No fee may be charged for filing any satisfaction or  
16 termination of any instrument as prescribed in this subdivision;

17 (4) For recording oil, gas, and mineral leases, and other recorded documents relating to  
18 mineral or oil and gas lease exploration and development, ~~six dollars per page~~ the  
19 sum of thirty dollars for the first fifty pages plus two dollars for each page or fraction  
20 thereof exceeding fifty pages; and

21 (5) For recording an easement filed by any entity created by chapter 34A-5, 46A-3A, or  
22 46A-9 or any nonprofit engaged in the treatment, distribution, and sale of water to  
23 rural consumers or any document filed by the Department of Transportation  
24 pertaining to the acquisition of highway right-of-way, the sum of twenty dollars for

1           the first three pages plus two dollars for each additional page or fraction thereof; and  
2       ~~(5)(6)~~ Notwithstanding the provisions of subdivision (2) of this section, the board of county  
3           commissioners shall fix by resolution the fees to be paid by licensed abstracters of  
4           the county or by any person who has passed the written examination established by  
5           the Abstracters' Board of Examiners pursuant to § 36-13-11 for uncertified copies of  
6           recorded instruments, which fee may not exceed the actual cost to the county for  
7           providing such copies.

8           The register of deeds may not charge a fee for discharging or canceling any personal  
9       property lien.

10          Section 2. That § 11-3-11 be amended to read as follows:

11          11-3-11. The register of deeds of the county recording any plat shall receive the sum of ~~ten~~  
12       sixty dollars ~~for the first page and five dollars for each additional page~~. The plat shall first be  
13       examined and accepted by the authorized governing body.

14          Section 3. That § 43-15A-9 be amended to read as follows:

15          43-15A-9. The register of deeds of the county recording any master deed or lease shall  
16       receive the sum of seventy-five dollars for the first fifty pages plus two dollars per page for each  
17       page or fraction thereof exceeding fifty pages. A master deed or lease shall be recorded in the  
18       same manner and subject to the same provisions of law as are deeds; ~~provided, that.~~ However,  
19       no state or local recordation tax upon the value of the property transferred shall apply to ~~any~~  
20       ~~such~~ the deed or portion thereof recorded solely for the purpose of complying with the  
21       provisions of § 43-15A-3.

22          Section 4. That § 44-8-13 be amended to read as follows:

23          44-8-13. An assignment of a mortgage on real property may be recorded in like manner as  
24       a mortgage when it is acknowledged or proved according to the statutes relating to proof of

1 instruments for record and contains the name of the mortgagor, the mortgagee, the assignee and  
2 ~~his~~ the assignee's post-office address, the date of the mortgage, the date, county, state, book, and  
3 page of record of the mortgage and full description of the premises as described in the mortgage.  
4 This record serves as notice to all parties in interest or parties subsequently dealing with the  
5 property. ~~If No more than one assignment is~~ may be listed on the instrument, ~~the register of~~  
6 ~~deeds is entitled to collect one dollar for each assignment listed after the first assignment.~~

7 Section 5. That § 44-9-50 be amended to read as follows:

8 44-9-50. Any owner or any person entering into a direct agreement with the owner, or the  
9 duly authorized agent or representative of the owner, may file with the register of deeds of the  
10 county in which the improved premises are situated a notice of project commencement. The  
11 notice of project commencement shall contain the following information:

- 12 (1) The name and address of the person filing the notice of project commencement;
- 13 (2) The name and address of the owner or developer;
- 14 (3) A general description of the improvement; and
- 15 (4) The location of the project, including the legal description of the property.

16 The notice shall be filed within thirty days of the commencement of work and shall be  
17 accompanied by a filing fee ~~of ten dollars to be deposited in the county's general fund as~~  
18 provided in subdivision 7-9-15(3). The register of deeds in each county shall maintain an index  
19 of all notices of project commencements.

20 Section 6. That § 43-20-10 be amended to read as follows:

21 43-20-10. The register of deeds of the county in which the corner is located shall charge a  
22 recording fee ~~as set forth in subdivision 7-9-15(1) for the first page and two dollars for each~~  
23 ~~additional page indexed~~ of ten dollars.

24 Section 7. That § 43-28-23 be amended to read as follows:

43-28-23. Any real estate document recorded with the register of deeds, except for plats,  
shall:

- (1) Consist of one or more individual sheets measuring no larger than 8.5 inches by 14 inches and no smaller than 8.5 inches by 11 inches. No sheet may be attached or affixed to a page that covers up any information or printed material on the document:  
~~Any continuous document or any document sheets that are stapled, glued, or bound together are subject to the additional fee established pursuant to subdivision 7-9-15(1);~~
- (2) Be printed, typewritten, or computer generated in black ink and the print type of the document may not be smaller than 10-point type. However, dates, notarial acknowledgments, signatures, and other items may be completed in black or blue ink if the document is predominantly completed in black ink and if the items that are completed in blue ink are sufficiently dark to meet the requirements of subdivision (6);
- (3) Be on white paper of not less than twenty pound weight;
- (4) Contain a blank space at the top measuring no less than three inches as measured from the top of the first page. The right half shall be used by the register of deeds for recording information and the left half shall be used by the document preparer as required pursuant to § 7-9-1 and may include other document information. All other margins shall be a minimum of one inch;
- (5) Have a title prominently displayed at the top of the first page below the blank space referred to in subdivision (4) of this section; and
- (6) Be sufficiently legible to reproduce a readable copy using the register of deed's current method of reproduction; ~~and~~

1 ~~(7) Conform to the standards provided in this section or be subject to the increased fees~~  
2 ~~as provided in § 7-9-15.~~

3 ~~However, the register of deeds may not charge an increased fee for any document that has~~  
4 ~~any portion of a notary or corporate seal or stamp, a page number, an initial, or a partial~~  
5 ~~signature in a margin. Any document that does not conform to the requirements of subdivisions~~  
6 ~~(1) to (5), inclusive, has the same effect as conforming documents for all recording purposes,~~  
7 ~~including establishing priority.~~ Any affidavit of publication, corner record, survey, certified  
8 court or governmental document, and UCC form recorded against real estate is exempt from the  
9 provisions of this section. Any plat or survey and certified vital record attached to documents  
10 is also exempt from the provisions of this section.

11 The provisions of this section do not apply to any real estate document prepared and  
12 executed prior to July 1, 2002.

13 Section 8. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 There is hereby established a county register of deeds modernization and preservation relief  
16 fund to be administered by the county register of deeds. The fund shall be used for  
17 modernization of information systems and preservation of property and records. The register of  
18 deeds may purchase or enter into agreements for software, training, equipment, maintenance,  
19 supplies, and contract services. The fund may not be used for salaries. Any money deposited in  
20 the county register of deeds modernization and preservation relief fund may not be reverted or  
21 transferred to the county general fund or any other county fund.

22 Section 9. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 Five dollars of each recording or filing fee collected by the register of deeds, pursuant to



1 subdivisions 7-9-15(1), (3), (4), and (5) and §§ 11-3-11, 43-15A-9, and 43-20-10, shall be  
2 deposited into the county register of deeds modernization and preservation relief fund. Sixty  
3 percent of the money deposited in the fund pursuant to this section shall remain in the fund for  
4 use by the register of deeds pursuant to section 8 of this Act. Forty percent of the money  
5 deposited in the fund pursuant to this section shall be remitted before the last working day of  
6 each month for the previous month's collections to the South Dakota association of county  
7 officials register of deeds modernization and preservation relief fund created pursuant to section  
8 11 of this Act.

9 Section 10. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The county register of deeds modernization and preservation relief fund may not be  
12 construed to diminish the duty of the county governing body to provide for funding for salaries,  
13 personnel, supplies, equipment and other expenses for the register of deeds, even if the funding  
14 is relative to technology and preservation in the performance of the duties of the register of  
15 deeds and any other laws relating thereto. The register of deeds may accept and fully retain any  
16 gifts, grants, contributions, or funds obtained from any other source for the purpose of carrying  
17 out the provisions of sections 8 and 9 of this Act. The gifts, grants, contributions, or funds shall  
18 remain entirely with the respective county register of deeds modernization and preservation  
19 relief fund.

20 Section 11. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 There is hereby established a South Dakota association of county officials register of deeds  
23 modernization and preservation relief fund to be administered by the South Dakota Association  
24 of County Officials. Distributions, including the cost to administer the fund, shall be approved

1 by the executive board of the association of county officials.

2 Section 12. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The fiscal year for the South Dakota association of county officials register of deeds  
5 modernization and preservation relief fund begins on July first and ends on June thirtieth.  
6 Before July thirty-first of each year, the association of county officials shall compute each  
7 county's share of the deposits from the previous fiscal year. The association shall certify each  
8 county's share of the total fund and remit the share to the county auditor on or before August  
9 thirty-first of each year. The money in the fund shall be divided equally among each of the sixty-  
10 six counties, less the administrative fee to be determined by the board of directors for the South  
11 Dakota Association of County Officials. The administrative fee may not exceed one percent of  
12 the total annual remittance to the fund. The county auditor shall deposit the money received  
13 pursuant to this section in the county register of deeds modernization and preservation relief  
14 fund.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

208T0651

## HOUSE APPROPRIATIONS

### ENGROSSED NO. **HB 1164** - 2/10/2012

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Wismer, Brunner, Dennert, Hawley, Hoffman, Schaefer, and Sigdestad and Senators Sutton, Frerichs, and Putnam

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the sale of certain  
2 surplus property in Yankton County.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 1 of chapter 30 of the 2011 Session Laws be amended to read as  
5 follows:

6 Section 1. The provisions of any law to the contrary, upon the request of the Governor, the  
7 Commissioner of School and Public Lands shall sell all or any portion of the following real  
8 estate located in Yankton County and any related personal property and improvements located  
9 on the property:

10 (a) Certain property under the control of the Department of Human Services described  
11 generally as Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section  
12 21, Township 94 North, Range 55, West of the 5th P.M., also described as Lot 13,  
13 consisting of 10.1 acres, more or less, and that portion of Lot 14 ~~as~~ described in  
14 Warranty Deed, F.V. Willhite, Grantor to Yankton State Hospital (administered by



1 the South Dakota Department of Human Services) Grantee; as recorded August 26th  
2 1918 in Book 120 on page 388 in the County of Yankton to wit: Commencing on the  
3 West or right bank of the James or Dakota River at a point where the east and west  
4 section line between sections 21 and 28 of Township 94 North, of Range 55 West of  
5 the 5th P.M. intersects said bank of said river; thence west along said section line  
6 4.51 chains; thence north to the right bank of said river, thence down said stream  
7 along the right bank of said river to the place of beginning north to the right bank of  
8 said river, and accreted land; all of Section 21, Township 94 North, range 55, West  
9 of the 5th P.M., consisting of 15 acres, more or less; and

- 10 (b) Certain property under the control of the Department of Human Services described  
11 generally as the East 1900 feet of the South 1300 feet of Lot A being a Subdivision  
12 of the SE1/4 of Section 36 Township 94 North Range 56 West of the 5th P.M.,  
13 consisting of 56.70 acres, more or less.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

861T0125

## HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1179** - 2/9/2012

Introduced by: Representatives Kirkeby, Brunner, Deelstra, and Munsterman and Senators  
Lederman, Juhnke, Peters, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to require certain campaign finance requirements to apply  
2 to all counties and municipalities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-27-39 be amended to read as follows:

5 12-27-39. The provisions of this chapter apply to each statewide office, legislative office,  
6 statewide ballot question, county offices and ballot questions in counties with population greater  
7 than five thousand according to the most recent Federal census, ballot questions in first class  
8 municipalities, and school district offices and ballot questions in school districts with more than  
9 two thousand average daily membership. Any municipal or school district election covered by  
10 this chapter shall conform to the contribution limits applicable to legislative offices. This  
11 chapter does not apply to the unified judicial system, nor does this chapter apply to any  
12 township, ~~municipal~~, or special purpose district offices or ballot questions or elections for  
13 municipal offices. However, the governing body of any county, township, municipality, school  
14 district, or special purpose district not otherwise covered by this chapter may adopt an ordinance



1 or resolution to make the provisions of this chapter, with or without amendments, applicable to  
2 ~~county~~, township, ~~municipal~~, school district, or special purpose district elections.

3 Section 2. That § 12-27-40 be amended to read as follows:

4 12-27-40. The state's attorney shall investigate any violation of the provisions of this chapter  
5 relating to elections for county and school district office or county, municipal, or school district  
6 ballot questions, and prosecute any violation thereof. In lieu of bringing a criminal action, the  
7 state's attorney may elect to file a civil action for any violation of this chapter. In a civil action,  
8 in addition to other relief, the court may impose a civil penalty in an amount not to exceed one  
9 thousand dollars for each violation. Any civil penalty recovered shall be paid to the county  
10 general fund if the violation arose out of a county office or ballot question, municipal general  
11 fund if the violation arose out of a municipal ballot question, or the school district general fund  
12 if the violation arose out of a school district office or ballot question. A civil enforcement action  
13 for a violation of the chapter concerning a municipal ballot question may, with the consent of  
14 the state's attorney, be brought by the municipality's attorney. A civil enforcement action for a  
15 violation of the chapter concerning a school district office or ballot question may, with the  
16 consent of the state's attorney, be brought by the school district's attorney. A civil action brought  
17 under this section shall be commenced in the county where filings under the chapter are  
18 required, in the county where the person resides, or in the county where the organization,  
19 political party, or political committee has its principal office.

20 Section 3. That § 12-27-42 be amended to read as follows:

21 12-27-42. Any statement, form, or filing required by this chapter shall be filed with the  
22 secretary of state in the case of a statewide office or legislative office election. Any statement,  
23 form, or filing required by this chapter shall be filed with the county auditor in the case of a  
24 county office election, with the municipal finance officer or clerk in the case of a municipal

1 ballot question election, with the school business manager in the case of a school district office  
2 election, or with the person in charge of the election in the case of other political subdivisions  
3 or special purpose districts. However, any county, municipality, school district, or other political  
4 subdivision may, by resolution, direct that any statement, form, or filing required by this chapter  
5 be electronically filed with the secretary of state, rather than being filed with the county,  
6 municipality, school district, or other political subdivision.

7 Section 4. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Nothing in this chapter prevents any political subdivision from adopting additional standards  
10 or requirements relating to campaign finance for elections held under the political subdivision's  
11 own jurisdiction that are more stringent than the provisions of this title.

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

597T0572

## HOUSE APPROPRIATIONS ENGROSSED NO. **HB 1199** - 2/10/2012

Introduced by: Representatives Wink and Brunner and Senators Rhoden and Juhnke

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the distribution of  
2 funds to sparse school districts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-79 be amended to read as follows:

5 13-13-79. At the same time that foundation program state aid is distributed to school  
6 districts pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of  
7 Education shall distribute funds to sparse school districts by multiplying the result of the  
8 calculation in either subdivision 13-13-78(2) or subdivision 13-13-78(3) by seventy-five percent  
9 of the per student allocation as defined in § 13-13-10.1. However, no sparse school district may  
10 receive a sparsity benefit in any year that exceeds ~~one hundred twenty-three thousand seven~~  
11 ~~hundred fifty dollars~~ one hundred ten thousand dollars. ~~If the appropriation is insufficient to~~  
12 ~~fully fund all sparse school districts as per the calculation in either subdivision 13-13-78(2) or~~  
13 ~~subdivision 13-13-78(3), each eligible district shall receive a pro rata share of the total~~  
14 ~~appropriated amount.~~





# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

742T0733

SENATE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1230** - 2/21/2012

Introduced by: Representatives Nelson (Stace), Brunner, Feickert, Hansen (Jon), Hickey, Hoffman, Hubbel, Hunhoff (Bernie), Kirschman, Kloucek, Kopp, Liss, Magstadt, Olson (Betty), Rozum, Russell, Tornow, Tulson, Van Gerpen, and Venner and Senators Adelstein, Frerichs, Hundstad, and Maher

1 FOR AN ACT ENTITLED, An Act to modify the publication requirements regarding the  
2 application for a well driller license or a well pump installer license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 46-2A-4 be amended to read as follows:

5 46-2A-4. Except in the case of an application for a well driller license or a well pump  
6 installer license, if a recommendation is to approve or defer an application or if an applicant has  
7 filed a petition to oppose a recommendation to deny an application, the applicant shall publish  
8 notice of the application and recommendation at least once ~~a week for two successive weeks~~ in  
9 at least one official newspaper in each county where the water will be diverted or used or where  
10 project works will be located. The official newspaper shall be selected by the chief engineer and  
11 shall be a newspaper designated as an official newspaper pursuant to § 7-18-3. If the official  
12 newspaper is a weekly newspaper, then the notice shall also be published at least once in a daily  
13 newspaper. The daily newspaper selected by the chief engineer shall be located as near as



1 possible to the location where the water will be diverted or used. Public notice of the application  
2 shall also be posted on the department's website until final action is taken on the application.

3 The ~~second~~ publication shall be at least twenty days before the first day of the Water  
4 Management Board meeting at which the matter is noticed to be heard. No application for a  
5 permit, license, or amendment may be considered and approved by the board until proof of all  
6 required publications has been filed with the chief engineer. The notice, which shall be provided  
7 by the chief engineer to the applicable newspapers, shall include the following, as applicable:

- 8 (1) The name and address of the applicant;
- 9 (2) A brief description of the project, including, where applicable, the proposed place or  
10 places of use of the water or facilities, including the point of diversion, the amount  
11 of water to be used and the purpose for which the water or facility is to be used;
- 12 (3) A brief statement describing the recommendation and the reasons for the  
13 recommendation;
- 14 (4) A statement that any interested person who intends to participate in the hearing shall  
15 file a petition to oppose or support the application and that the petition shall be filed  
16 with the chief engineer and applicant at least ten days before the published date for  
17 hearing;
- 18 (5) A statement that a petition to oppose or support an application may be informal, but  
19 shall be in writing and shall contain the following:
  - 20 (a) A statement describing the petitioner's interest in the application;
  - 21 (b) The reasons for the petitioner's opposition to or support for the application;
  - 22 and
  - 23 (c) The signature and mailing address of the petitioner or the petitioner's legal  
24 counsel;

- 1       (6)    A statement telling where copies of the recommendation, application, or other  
2            information may be obtained;
- 3       (7)    The time when and the place where the application will be considered by the board;
- 4       (8)    A statement that the recommendation of the chief engineer is not final or binding  
5            upon the board and is subject to the approval of the board after it reaches a  
6            conclusion based on facts at the public hearing;
- 7       (9)    A statement that the time of hearing will be automatically extended for at least twenty  
8            days upon written request of the applicant or any person who has filed a petition to  
9            oppose or support the application and a statement that any such request by the  
10          applicant or person filing a petition shall be made at least ten days before the  
11          published date for hearing; and
- 12      (10)   A statement that if the applicant does not contest the recommendation of the chief  
13            engineer and no petition to oppose the application is received, the chief engineer shall  
14            act on the application pursuant to the chief engineer's recommendation and no  
15            hearing may be held before the board, unless the chief engineer makes a finding that  
16            an application, even if uncontested, presents important issues of public policy or  
17            public interest that should be heard by the board.

18      Section 2. That § 46-2A-23 be amended to read as follows:

19      46-2A-23. Following the issuance of a recommendation to approve an application pursuant  
20      to § 46-2A-2, the chief engineer may publish, at the expense of the applicant, a notice to  
21      determine whether any person opposes the application or recommendation of the chief engineer.  
22      The notice shall be published as provided for in § 46-2A-4, and the notice shall contain the  
23      information provided for in subdivisions 46-2A-4(1), (2), (3), (5), (6), and (10). The notice is  
24      not required to refer to a board meeting or hearing date. In addition, the notice shall include a

1 statement that if the applicant intends to contest the recommendation, the applicant shall file a  
2 petition with the chief engineer, and any interested person who intends to oppose or support the  
3 application or recommendation shall file a petition with the chief engineer and the applicant.  
4 Any petition shall be filed within ten days of the ~~second~~ published notice.

5 If no petition to contest the recommendation or to oppose an application is timely filed, the  
6 chief engineer, following receipt of proof of publication, shall act on the application consistent  
7 with the chief engineer's recommendation as provided by rules promulgated by the Water  
8 Management Board pursuant to chapter 1-26 delegating authority to the chief engineer to issue  
9 uncontested permits pursuant to §§ 46-1-16 and 46-2-3.1, without hearing by the board.

10 If a petition to contest the recommendation or to oppose the application is timely filed, the  
11 chief engineer shall provide notice of a board hearing pursuant to § 1-26-17. The notice shall  
12 also include a statement that the recommendation of the chief engineer is not final or binding  
13 upon the board and is subject to the decision of the board based on evidence and record of the  
14 public hearing. A statement shall also be included in the notice that the applicant or any  
15 interested person who has filed a petition to oppose or support an application, may file a written  
16 notice with the chief engineer requesting postponement of the original hearing date. The written  
17 notice requesting postponement shall be filed within twenty days of the date of the notice  
18 scheduling the board hearing, but not less than ten days before the date the application is  
19 scheduled for hearing. Upon timely receipt of a written notice, the chief engineer shall cancel  
20 the original hearing and reschedule the hearing not less than twenty days after the original  
21 hearing date. Notice of hearing shall be provided by personal service or by first class mail to the  
22 applicant and parties of record.

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

385T0712

### HOUSE JUDICIARY ENGROSSED NO. **HB 1254** 2/8/2012

Introduced by: Representatives Hunt, Brunner, Cronin, Greenfield, Haggar, Hansen (Jon), Hubbel, Jensen, Kloucek, Miller, Nelson (Stace), Olson (Betty), Sly, Stricherz, Van Gerpen, and Wick and Senators Kraus, Brown, Heineman, Hunhoff (Jean), Krebs, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the decision of a  
2 pregnant mother considering termination of her relationship with her child by an abortion,  
3 to establish certain procedures to insure that such decisions are voluntary, uncoerced, and  
4 informed, and to revise certain causes of action for professional negligence relating to  
5 performance of an abortion.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. That § 34-23A-53 be amended to read as follows:

8 34-23A-53. Terms as used in §§ 34-23A-53 to 34-23A-62, inclusive, mean:

9 (1) "Pregnancy help center," any entity whether it be a form of corporation, partnership,  
10 or proprietorship, whether it is for profit, or nonprofit, that has as one of its principal  
11 missions to provide education, counseling, and other assistance to help a pregnant  
12 mother maintain her relationship with her unborn child and care for her unborn child,  
13 which entity has a medical director who is licensed to practice medicine in the State



1 of South Dakota, or that it has a collaborative agreement with a physician licensed  
2 in South Dakota to practice medicine to whom women can be referred, which entity  
3 does not perform abortions and is not affiliated with any physician or entity that  
4 performs abortions, and does not now refer pregnant mothers for abortions, and has  
5 not referred any pregnant mother for abortions for the three-year period immediately  
6 preceding July 1, 2011, and which are in compliance with the requirements of section  
7 8 of this Act;

8 (2) ~~"Risk factor associated with abortion," any factor, including any physical,~~  
9 ~~psychological, emotional, demographic, or situational factor, for which there is a~~  
10 ~~statistical association with an increased risk of one or more complications associated~~  
11 ~~with legal abortion, such that there is a less than five percent probability that the~~  
12 ~~statistical association is due to sampling error. To be recognized as a risk factor~~  
13 ~~associated with legal abortion, the statistical information must have been published~~  
14 ~~in the English language, after 1972, in at least one peer-reviewed journal indexed by~~  
15 ~~the search services maintained by the United States National Library of Medicine~~  
16 ~~(PubMed or MEDLINE, or any replacement services subsequently established by the~~  
17 ~~National Library) or in at least one peer-reviewed journal indexed by any search~~  
18 ~~service maintained by the American Psychological Association (PsycINFO, or any~~  
19 ~~replacement service) and the date of first publication must be not less than twelve~~  
20 ~~months before the date of the initial consultation described in § 34-23A-56;~~

21 (3) ~~"Complications associated with abortion," any adverse physical, psychological, or~~  
22 ~~emotional reaction, for which there is a statistical association with legal abortion,~~  
23 ~~such that there is a less than five percent probability that the statistical association is~~  
24 ~~due to sampling error. To be recognized as a complication associated with legal~~

1 ~~abortion, the statistical information must have been published in the English~~  
2 ~~language, after 1972, in at least one peer-reviewed journal indexed by the search~~  
3 ~~services maintained by the United States National Library of Medicine (PubMed or~~  
4 ~~MEDLINE, or any replacement services subsequently established by the National~~  
5 ~~Library) or in at least one peer-reviewed journal indexed by any search service~~  
6 ~~maintained by the American Psychological Association (PsycINFO, or any~~  
7 ~~replacement service) and the date of first publication must be not less than twelve~~  
8 ~~months before the date of the initial consultation described in § 34-23A-56;~~

- 9 (4) ~~"Coercion," exists if the pregnant mother has a desire to carry her unborn child and~~  
10 ~~give birth, but is induced, influenced, or persuaded to submit to an abortion by~~  
11 ~~another person or persons against her desire. Such inducement, influence, or~~  
12 ~~persuasion may be by use of, or threat of, force, or may be by pressure or intimidation~~  
13 ~~effected through psychological means, particularly by a person who has a relationship~~  
14 ~~with the pregnant mother that gives that person influence over the pregnant mother~~  
15 is induced to consent to an abortion by any other person under circumstances, or in  
16 such a manner, which deprives her from making a free decision or exercising her free  
17 will.

18 Section 2. That § 34-23A-56 be amended to read as follows:

19 34-23A-56. No surgical or medical abortion may be scheduled except by a licensed  
20 physician and only after the physician physically and personally meets with the pregnant mother,  
21 consults with her, and performs an assessment of her medical and personal circumstances. Only  
22 after the physician completes the consultation and assessment complying with the provisions  
23 of §§ 34-23A-53 to 34-23A-62, inclusive, may the physician schedule a surgical or medical  
24 abortion, but in no instance may the physician schedule such surgical or medical abortion to take

place in less than seventy-two hours from the completion of such consultation and assessment except in a medical emergency as set forth in § 34-23A-10.1 and subdivision 34-23A-1(5). No physician may have the pregnant mother sign a consent for the abortion on the day of this initial consultation. No physician may take a signed consent from the pregnant mother unless the pregnant mother is in the physical presence of the physician and except on the day the abortion is scheduled, and only after complying with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, as they pertain to the initial consultation, and only after complying with the provisions of subdivisions 34-23A-10.1(1) and (2). During the initial consultation between the physician and the pregnant mother, prior to scheduling a surgical or medical abortion, the physician shall:

(1) Do an assessment of the pregnant mother's circumstances to make a reasonable determination whether the pregnant mother's decision to submit to an abortion is the result of any coercion, ~~subtle or otherwise~~ or pressure from other persons. In conducting that assessment, the physician shall obtain from the pregnant mother the age or approximate age of the father of the unborn child, and the physician shall ~~determine~~ consider whether any disparity in the age between the mother and father is a factor ~~in creating an~~ when determining whether the pregnant mother has been subjected to pressure, undue influence, or coercion;

(2) Provide the written disclosure required by subdivision 34-23A-10.1(1) and discuss them with her to determine that she understands them;

(3) Provide the pregnant mother with the names, addresses, and telephone numbers of all pregnancy help centers that are registered with the South Dakota Department of Health pursuant to §§ 34-23A-53 to 34-23A-62, inclusive, and provide her with written instructions that set forth the following:

(a) That prior to the day of any scheduled abortion the pregnant mother must have



1 a consultation at a pregnancy help center at which the pregnancy help center  
2 shall inform her about what education, counseling, and other assistance is  
3 available to help the pregnant mother keep and care for her child, and have a  
4 private interview to discuss her circumstances that may subject her decision  
5 to coercion;

6 (b) That prior to signing a consent to an abortion, the physician shall first obtain  
7 from the pregnant mother, a written statement that she obtained a consultation  
8 with a pregnancy help center, which sets forth the name and address of the  
9 pregnancy help center, the date and time of the consultation, and the name of  
10 the counselor at the pregnancy help center with whom she consulted;

11 (4) Conduct an assessment of the pregnant mother's health and circumstances to  
12 determine if any of the following preexisting risk factors associated with abortion  
13 adverse psychological outcomes following an abortion are present in her case;  
14 completing a form which for each factor reports whether the factor is present or not;

15 (a) Coercion;

16 (b) Pressure from others to have an abortion;

17 (c) The pregnant mother views an abortion to be in conflict with her personal or  
18 religious values;

19 (d) The pregnant mother is ambivalent about her decision to have an abortion, or  
20 finds the decision of whether to have an abortion difficult and she has a high  
21 degree of decisional distress;

22 (e) That the pregnant mother has a commitment to the pregnancy or prefers to  
23 carry the child to term;

24 (f) The pregnant mother has a medical history that includes a pre-abortion mental

health or psychiatric problem; and

(g) The pregnant mother is twenty-two years old or younger.

The physician making the assessment shall record in the pregnant mother's medical records, on a form created for such purpose, each of the risk factors associated with adverse psychological outcomes following an abortion listed in this subdivision that are present in her case and which are not present in her case;

(5) ~~Discuss with the pregnant mother the results of the assessment for risk factors, reviewing with her the form and its reports with regard to each factor listed~~ The physician shall identify for the pregnant mother and explain each of the risk factors associated with adverse psychological outcomes following an abortion listed in subdivision (4) which are present in her case;

(6) ~~In the event that any risk factor is determined to be present, discuss with the pregnant mother, in such manner and detail as is appropriate so that the physician can certify that the physician has made a reasonable determination that the mother understands the information, all material information about any complications associated with the risk factor, and to the extent available all information about the rate at which those complications occurs both in the general population and in the population of persons with the risk factor~~ The physician shall advise the pregnant mother of each risk factor associated with adverse psychological outcomes following an abortion listed in subdivision 34-23A-56(4) which the physician determines are present in her case and shall discuss with the pregnant mother, in such a manner and detail as is appropriate, so that the physician can certify that the physician has made a reasonable determination that the pregnant mother understands the information imparted, all material information about the risk of adverse psychological outcomes known to be

1           associated with each of the risk factors found to be present;

2           (7)    In the event that no risk factor is determined to be present, the physician shall include  
3                in the patient's records a statement that the physician has discussed the information  
4                required by the other parts of this section and that the physician has made a  
5                reasonable determination that the mother understands the information in question;

6           (8)    Records of the assessments, forms, disclosures, and instructions performed and given  
7                pursuant to this section shall be prepared by the physician and maintained as a  
8                permanent part of the pregnant mother's medical records.

9           Section 3. That § 34-23A-57 be amended to read as follows:

10          34-23A-57. On the day on which the abortion is scheduled, no physician may take a consent  
11          for an abortion nor may the physician perform an abortion, unless ~~the physician has fully~~  
12          ~~complied with~~ the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, have been met, and the  
13          physician first obtains from the pregnant mother, a written, signed statement setting forth all  
14          information required by subsection 34-23A-56(3)(b). The written statement signed by the  
15          pregnant mother shall be maintained as a permanent part of the pregnant mother's medical  
16          records. Only the physician who meets with and consults with the pregnant mother pursuant to  
17          § 34-23A-56 can take her consent and perform her abortion unless serious unforeseen  
18          circumstances prevent that physician from taking the consent and performing the abortion.

19          Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
20          as follows:

21          On or before January 2, 2013, each pregnancy help center which has been placed on the  
22          registry of pregnancy help centers maintained by the Department of Health before January 1,  
23          2012, as a condition to remain on the state registry of pregnancy help centers, shall submit a  
24          supplemental affidavit that certifies that:

(1) It has available either on staff, or pursuant to a collaborative agreement, a licensed counselor, or licensed psychologist, or licensed certified social worker, or licensed nurse, or licensed marriage and family therapist, or physician, to provide the counseling related to the assessment for coercion and the associated imparting of information described in §§ 34-23A-53 to 34-23A-62, inclusive; and

(2) It shall strictly adhere to the confidentiality requirements set forth in §§ 34-23A-53 to 34-23A-62, inclusive.

Section 5. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center which has been placed on the registry of pregnancy help centers maintained by the Department of Health before January 1, 2012, shall remain on the registry of the Department of Health and is eligible to provide the counseling and interviews described in §§ 34-23A-53 to 34-23A-62 for pregnancy help centers until January 1, 2013. Thereafter, each pregnancy help center shall remain on the state registry of the Department of Health and maintain its eligibility to provide the counseling and interviews by submitting to the Department of Health the supplemental affidavit provided for in section 4 of this Act.

Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center which has not been placed on the registry of pregnancy help centers maintained by the Department of Health before January 1, 2012, which submits a written request or application to be listed on the state registry of pregnancy help centers, in order to be included on the registry, shall submit to the Department of Health an affidavit that certifies all of the information required by § 34-23A-58 as well as the information required by section 4 of this Act.

Section 7. That § 34-23A-59 be amended to read as follows:

34-23A-59. A pregnancy help center ~~consulted by a pregnant mother considering consenting to an abortion, as a result of the provisions of §§ 34-23A-53 to 34-23A-62, inclusive,~~  
consultation required by this Act shall be implemented as follows:

(1) The pregnancy help center shall be permitted to interview the pregnant mother to determine whether the pregnant mother has been subject to any coercion to have an abortion, or is being pressured into having an abortion, and shall be permitted to inform the pregnant mother in writing or orally, or both, what counseling, education, and assistance that is available to the pregnant mother to help her maintain her relationship with her unborn child and help her care for the child both through the pregnancy help center or any other organization, faith-based program, or governmental program. The pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption;

(2) During the consultation interviews provided for by §§ 34-23A-53 to 34-23A-62, inclusive, ~~the no pregnancy help centers, their agents and employees center, its agents or employees,~~ may ~~not~~ discuss with ~~the~~ any pregnant ~~mothers~~ mother religion or religious beliefs, either of the mother or the counselor, unless the pregnant mother consents in writing. ~~The pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption;~~

(3) The pregnancy help center is under no obligation to communicate with the abortion provider in any way, and is under no obligation to submit any written or other form of confirmation that the pregnant mother consulted with the pregnancy help center. The pregnancy help center may voluntarily provide a written statement of assessment to the abortion provider, whose name the woman shall give to the pregnancy help

center, if the pregnancy help center obtains information that indicates that the pregnant mother has been subjected to coercion or that her decision to consider an abortion is otherwise not voluntary or not informed. The physician shall make the physician's own independent determination whether or not a pregnant mother's consent to have an abortion is voluntary, uncoerced, and informed before having the pregnant mother sign a consent to an abortion. The physician shall review and consider any information provided by the pregnancy help center as one source of information, which in no way binds the physician, who shall make an independent determination consistent with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, the common law requirements, and accepted medical standards;

(4) Any written statement or summary of assessment prepared by the pregnancy help center as a result of counseling of a pregnant mother as a result of the procedures created by §§ 34-23A-53 to 34-23A-62, inclusive, may be forwarded by the pregnancy help center, in its discretion, to the abortion physician. If forwarded to the physician, the written statement or summary of assessment shall be maintained as a permanent part of the pregnant mother's medical records. Other than forwarding such documents to the abortion physician, no information obtained by the pregnancy help center from the pregnant mother may be released, without the written signed consent of the pregnant mother or unless the release is in accordance with federal, state, or local law.

Nothing in §§ 34-23A-53 to 34-23A-62, inclusive, may be construed to impose any duties or liability upon a pregnancy help center.

Section 8. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center listed on the Department of Health registry of pregnancy help centers prior to January 1, 2012, shall, beginning on January 1, 2013, have available either on staff or pursuant to a collaborative agreement, a licensed counselor, or licensed psychologist, or licensed nurse, or licensed marriage and family therapist, or a licensed physician to meet privately with the pregnant mother to provide the counseling and meeting required by this Act.

Any pregnancy help center placed on the state registry on or after January 1, 2012, shall have one or more such licensed professionals available on staff or pursuant to collaborative agreement for such purposes beginning on January 1, 2012.

Section 9. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any person who knowingly and intentionally releases any information obtained during any consultations resulting from this Act, under circumstances not in accord with the confidentiality provisions required by this Act, is guilty of a Class 2 misdemeanor. Such a conviction of a Class 2 misdemeanor shall be reported to any agency or board responsible for licensing or certifying the persons who conducted the counseling required by this Act.

Section 10. That § 34-23A-61 be amended to read as follows:

34-23A-61. In any civil action presenting a claim arising from a failure to comply with any of the provisions of this chapter, the following shall apply:

(1) The failure to comply with the requirements of this chapter relative to obtaining consent for the abortion shall create a rebuttable presumption that if the pregnant mother had been informed or assessed in accordance with the requirements of this chapter, she would have decided not to undergo the abortion;

(2) If the trier of fact determines that the abortion was the result of coercion, and it is determined that if the physician acted prudently, the physician would have learned

1 of the coercion, there is a nonrebuttable presumption that the mother would not have  
2 consented to the abortion if the physician had complied with the provisions of §§ 34-  
3 23A-53 to 34-23A-62, inclusive;

4 (3) If evidence is presented by a defendant to rebut the presumption set forth in  
5 subdivision (1), then the finder of fact shall determine whether this particular mother,  
6 if she had been given all of the information a reasonably prudent patient in her  
7 circumstance would consider significant, as well as all information required by  
8 §§ 34-23A-53 to 34-23A-62, inclusive, to be disclosed, would have consented to the  
9 abortion or declined to consent to the abortion based upon her personal background  
10 and personality, her physical and psychological condition, and her personal  
11 philosophical, religious, ethical, and moral beliefs;

12 (4) The pregnant mother has a right to rely upon the abortion doctor as her source of  
13 information, and has no duty to seek any other source of information, other than from  
14 a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57, prior to  
15 signing a consent to an abortion;

16 (5) No patient or other person responsible for making decisions relative to the patient's  
17 care may waive the requirements of this chapter, and any verbal or written waiver of  
18 liability for malpractice or professional negligence arising from any failure to comply  
19 with the requirements of this chapter is void and unenforceable.



# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

400T0427

### HOUSE ENGROSSED NO. **SB 42** - 2/21/2012

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding habeas corpus.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 21-27-3.1 be amended to read as follows:

4 21-27-3.1. ~~An application for relief~~ Proceedings under this chapter ~~may be filed at any time~~  
5 ~~except that proceedings thereunder~~ cannot be maintained while an appeal from the applicant's  
6 conviction and sentence is pending or during the time within which such appeal may be  
7 perfected.

8 Section 2. That § 21-27-3.2 be repealed.

9 ~~— 21-27-3.2. An application under this chapter may be dismissed if it appears that the state or~~  
10 ~~the applicant's custodian has been prejudiced in its ability to respond to the application by delay~~  
11 ~~in its filing, unless the applicant shows that the application is based on grounds of which he~~  
12 ~~could not have had knowledge by the exercise of reasonable diligence before the circumstances~~  
13 ~~causing the prejudice occurred. It shall be presumed that the state or the applicant's custodian~~  
14 ~~has been prejudiced if the application is filed more than five years after signing, attestation and~~  
15 ~~filing of the judgment or order under which the applicant is held. This presumption is rebuttable~~



1 ~~pursuant to § 19-11-1.~~

2 Section 3. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 A two-year statute of limitation applies to all applications for relief under this chapter. This  
5 limitation period shall run from the latest of:

- 6 (1) The date on which the judgment became final by the conclusion of direct review or  
7 the expiration of the time for seeking such review;
- 8 (2) The date on which the impediment to filing an application created by state action in  
9 violation of the constitution or laws of the United States or of this state is removed,  
10 if such impediment prevented the applicant from filing;
- 11 (3) The date on which the constitutional right asserted in the application was initially  
12 recognized by the Supreme Court of the United States or the Supreme Court of this  
13 state if the right has both been newly recognized and is retroactively applicable to  
14 cases on collateral review; or
- 15 (4) The date on which the factual predicate of the claim or claims presented could have  
16 been discovered through the exercise of due diligence.

17 Section 4. That § 21-27-4 be amended to read as follows:

18 21-27-4. If a person has been committed, detained, imprisoned, or restrained of his liberty,  
19 under any color or pretense whatever, civil or criminal, and if upon application made in good  
20 faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is  
21 satisfactorily shown that the person is without means to prosecute the proceeding, the court or  
22 judge shall, if the judge finds that such appointment is necessary to ensure a full, fair, and  
23 impartial proceeding, appoint counsel for the indigent person pursuant to chapter 23A-40. Such  
24 counsel fees or expenses shall be a charge against and be paid by the county from which the

1 person was committed, or for which the person is held as determined by the court. Payment of  
2 all such fees or expenses shall be made only upon written order of the court or judge issuing the  
3 writ. The ineffectiveness or incompetence of counsel, whether retained or appointed, during any  
4 collateral post-conviction proceeding is not grounds for relief under this chapter.

5 Section 5. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 A claim presented in a second or subsequent habeas corpus application under this chapter  
8 that was presented in a prior application under this chapter or otherwise to the courts of this state  
9 by the same applicant shall be dismissed.

10 Before a second or subsequent application for a writ of habeas corpus may be filed, the  
11 applicant shall move in the circuit court of appropriate jurisdiction for an order authorizing the  
12 applicant to file the application.

13 The assigned judge shall enter an order denying leave to file a second or successive  
14 application for a writ of habeas corpus unless:

15 (1) The applicant identifies newly discovered evidence that, if proven and viewed in light  
16 of the evidence as a whole, would be sufficient to establish by clear and convincing  
17 evidence that no reasonable fact finder would have found the applicant guilty of the  
18 underlying offense; or

19 (2) The application raises a new rule of constitutional law, made retroactive to cases on  
20 collateral review by the United States Supreme Court and the South Dakota Supreme  
21 Court, that was previously unavailable. The grant or denial of an authorization by the  
22 circuit court to file a second or subsequent application shall not be appealable.

23 Section 6. That § 21-27-16.1 be repealed.

24 —~~21-27-16.1. All grounds for relief available to a petitioner under this chapter shall be raised~~

1 ~~in his original, supplemental or amended application. Any ground not raised, finally adjudicated~~  
2 ~~or knowingly and understandingly waived in the proceedings resulting in his conviction or~~  
3 ~~sentence or in any other proceeding that the applicant has taken to secure relief from his~~  
4 ~~conviction, or sentence, may not be the basis for a subsequent application, unless the court finds~~  
5 ~~grounds for relief asserted which for reasonable cause were omitted or inadequately raised in~~  
6 ~~the original, supplemental, or amended application.~~

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

561T0630

## HOUSE ENGROSSED NO. **SB 99** - 2/21/2012

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Hansen (Tom), Bradford, and Johnston and Representatives White and Gibson

1 FOR AN ACT ENTITLED, An Act to allow certain licensees or employees of a licensed  
2 establishment who have been charged with certain felony offenses to be prohibited from  
3 entering the licensed premises.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Any licensee or employee of a licensee who is charged with a felony offense involving a  
8 minor, a crime of violence pursuant to subdivision 22-1-2(9), or a felony drug-related offense  
9 on the licensed premises may, as a condition of bond, be prohibited from entering onto the  
10 licensed premises.

